Supreme Court, U.S.
FILED

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No. 09 – 2530

In The
Supreme Court of the United States

DOM WADHWA, M.D., *pro se*
SHARON A. FINIZIE, R.N., *pro se*
Petitioners,

v.

DEPARTMENT OF VETERANS AFFAIRS,
Respondent.

JACQUELINE C. ROMERO, Esquire,
Attorney for the Respondent

On Petition For A Writ of Certiorari
To The United States Court of Appeals For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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* Please note: Docket No. 08-3321 Wadhwa v. Nicholson was returned by the United States Supreme Court for a rehearing at the United States Court of Appeals for the Third Circuit and this case was reassigned as Docket No. 09-2530 in June 2009.

Dated: January 8, 2010

QUESTION PRESENTED

Whether the United States Court of Appeals for the Third Circuit has rendered an opinion regarding jurisdiction for *Dom Wadhwa, M.D., pro se, et. al. v. Department of Veterans Affairs, Docket Number: 09-2530** that is in conflict with its prior opinion in the case of *Saber v. Finance America Credit Corp., 843 F.2d 697, 702 (3rd Cir. 1988).*

* Please note: Docket No. 08-3321 Wadhwa v. Nicholson was returned by the United States Supreme Court for a rehearing at the United States Court of Appeals for the Third Circuit and this case was reassigned as Docket No. 09-2530 in June 2009.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is reported in **Exhibit A**. The Memorandum and Order of the United States District Court for The Eastern District of Pennsylvania is reported in **Exhibit B and Exhibit C**. A timely request for reconsideration was denied by the United States District Court for The Eastern District of Pennsylvania. A timely appeal and request for reconsideration to the United States Court of Appeals for the Third Circuit was denied.

JURISDICTION

The United States Court of Appeals for the Third Circuit filed its decision on October 9, 2009 on petitioners' lack of jurisdiction for our appeal to the United States District Court for the Eastern District of Pennsylvania and thereafter entered its order denying petitioners' motion for rehearing on November 9, 2009. This court has jurisdiction under 28 U.S.C. § 1254 (1) to review the U.S. Court of Appeals for the Third Circuit's decision by writ of certiorari.

BASIS FOR INVOKING JURISDICTION

The basis for invoking the jurisdiction of the U.S. Supreme Court is that the U.S. Court of Appeals for the Third Circuit has rendered an opinion in our case that conflicts with its prior opinion and the opinion involves fundamental issues of broad public importance requiring determination by the U.S. Supreme Court.

STATEMENT OF THE CASE

Issue One: Successful *ex-parte* communication by Respondent's Attorney with Chief Judge Harvey Bartle III for consolidation of four independent Civil Action lawsuits for reasons of "Judicial Economy."

Issue Two: The Court Order dismissed three independent lawsuits consolidated after ex-parte communication by Jacqueline Romero, Esquire, Respondent's Attorney with the Chief Judge. Therefore, *Saber v. Finance America Credit Corp., 843, F.2d 697, 702 (3d Cir. 1988)* does not apply here.

SUPREME COURT OF THE
UNITED STATES
1 First Street, NE
Washington, DC 20543

Dom Wadhwa, M.D., *pro se*
Sharon A. Finizie, R.N., *pro se*
Petitioners,

US Court of Appeals
for the Third Circuit
Docket No. 09-2530

v.

Department of Veterans Affairs,
Respondent

Petitioners' Request for Writ of Certiorari

Pursuant to the Supreme Court of The United States Rules of Practice, we, Dom Wadhwa, M.D., *pro se,* and Sharon A. Finizie, R.N. *pro se,* hereby file with this Court a *Petitioners' Request for Writ of Certiorari* on the issues that are the subject for review, Docket No. 09-2350,[1] for the U.S. District Court for the Eastern District of Pennsylvania Court Order, dated

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[1] Please note: Docket No. 08-3321 Wadhwa v. Nicholson was returned by the United States Supreme Court for a rehearing at the United States Court of Appeals for the Third Circuit and this case was reassigned as Docket No. 09-2530 in June 2009.

June 23, 2008, and the United States Court of Appeals for the Third Circuit's related Order, dated October 9, 2009.

This Honorable Court should review this case, because our petition raises issues that are critical for us (Dr. Wadhwa and Ms. Finizie), as *pro se* petitioners, to the successful outcome of our appeal for this case.

POINTS OF LAW OR FACT OVERLOOKED OR MISAPPREHENDED BY THE PANEL OF THE THIRD CIRCUIT COURT

The October 9, 2009 Court Order issued by Honorable D. Brooks Smith, Circuit Judge for the United States Court of Appeals for the Third Circuit, states "*This Court 'ordinarily has no jurisdiction to review on an interlocutory basis a district court's failure to certify a case for review,' Saber v. Finance America Credit Corp., 843 F.2d 697, 702 (3d Cir. 1988)" and that I (Dr. Wadhwa) as Appellant had failed to establish the present case should be addressed differently from Saber*." **(Exhibit A)**

The following are the reasons why our (Dr. Wadhwa's and Ms. Finizie's) case should be addressed differently than Saber:

1. Saber does not have three independent cases that were consolidated by the Respondent's counsel with another case and then, dismissed by the Administrative Judge (AJ) based on *false and untruthful* information provided to the District Court. However, this was the case in

our situation. In October 2007, Jacqueline Romero, Esquire, Trial Attorney and Respondent for the defendant, made *ex-parte* communications with Honorable Harvey Bartle III in October 2007 to consolidate my (Dr. Wadhwa's) three independent civil action lawsuits, Civil Action Nos. 07-2677, 07-2997, and 07-3301 with our (Dr. Wadhwa's and Ms. Finizie's) Civil Action No. 07-2750.

The Chief Judge, Harvey Bartle III, granted Ms. Romero her request based on this *ex-parte* communication with him to consolidate my (Dr. Wadhwa's) three independent lawsuits with our (Dr. Wadhwa's and Ms. Finizie's) Civil Action No. 07-2750 and the District Court designated the consolidation of the four cases as Consolidated Civil Action No. 07-3301.

Subsequently, Ms. Romero used legal maneuvering and filed a motion to have these three independent lawsuits dismissed by Mary A. McLaughlin, Judge, (AJ) from the Consolidated Civil Action No. 07-3301. The AJ issued a Court Order, dated June 23, 2008 **(Exhibit B)** (and a related Court Order entered on July 25, 2008) dismissing my (Dr. Wadhwa's) three independent lawsuits based on *false and untruthful* information provided by Agency Officials at the Philadelphia VA Medical Center ('PVAMC' or 'Agency') for this case.

2. Saber states: *"The Federal Rules of Civil Procedure require a district court directing the entry of judgment as to one or more, but fewer than all, of the claims or parties to make 'an express determination that there is no just reason for delay' and to issue 'an express direction for the entry of judgment.' Fed.R.Civ.P. 54(b). Without this certification, a district court order will not be considered final."*

In our (Dr. Wadhwa's and Ms. Finizie's) case, the December 23, 2008 direct entry judgment and the March 19, 2009 request for reconsideration of the denial of direct entry judgment for my (Dr. Wadhwa's) three independent civil action lawsuits in the Consolidated Civil Action No. 07-3301 was requested from the AJ and these requests were denied. The AJ offered no explanation for denial of our request for direct entry judgment on March 4, 2009 and our request for reconsideration of the denial of direct entry judgment on March 25, 2009.

3. Our petition for writ of certiorari is of critical importance to us (Dr. Wadhwa and Ms. Finizie) as it may affect the outcome of our appeal to this Court.

If the AJ's June 23, 2008 Court Order (and a related Court Order entered on July 25, 2008) dismissing the three independent lawsuits based on *false and untruthful* information

provided by Agency Officials at PVAMC are upheld based solely on the content of Ms. Romero's brief, the Court will be unable to reach conclusions based on facts.

Ms. Romero repeatedly makes completely false statements in her briefs based on bold-faced lies made by Ms. Conroy, staff attorney at PVAMC. Then, Ms. Romero reaches conclusions, not based on the genuine facts, but rather on newly invented claims. Furthermore, Ms. Romero has not produced a single shred of evidence to support any of the claims made by her as defendant's counsel.

The strategy used by Ms. Romero is to systematically ignore all of my (Dr. Wadhwa's) well-founded claims and create issues to distract and mislead the Court.

Finally, if this Honorable Court affirms the AJ's decision to dismiss my (Dr. Wadhwa's) three independent lawsuits that were consolidated with our (Dr. Wadhwa's and Ms. Finizie's) Consolidated Civil Action No. 07-3301, it will serve to allow the Agency Officials at the Philadelphia VA Medical Center (PVAMC) to unjustly discipline, harass

and bully physicians, such as myself (Dr. Wadhwa).[2]

Therefore, we, petitioners (Dr. Wadhwa and Ms. Finizie), respectfully request review of arguments made by or omitted by Respondent's counsel in the "Respondent's Opposition to Petitioner's Response to Jurisdiction for Petition For Review (PFR), dated October 17, 2008."

As stated earlier, we (Dr. Wadhwa and Ms. Finizie) believe that our Petition for Writ of Certiorari is necessary and appropriate to fairly resolve defendant counsel's October 17, 2008 motion, and will benefit and assist the Court in its resolution of:

(a) the actual facts in our (Dr. Wadhwa's and Ms. Finizie's) case and

---

[2] I (Dr. Wadhwa) am being treated in the same fashion as Dr. Arthur Newmark was treated by Dr. Murphy and the Agency officials at the Philadelphia VA Medical Center (PVAMC) in Civil Action Case No. 99-CV-5798 *Newmark v. John J. Murphy and the agency* **(the same John J. Murphy, M.D., and the same Agency officials at PVAMC that are involved in formulating false accusations against me).** This civil action case states that when information in a physician's **"evaluation was factually incorrect and he asked how it could be corrected"**.....the physician was told that he could **"attach a note of explanation, but that PVAMC had no procedure to remove false information."** Dr. Newmark, the physician in this case, was ultimately terminated by the Agency officials at PVAMC based on false information. However, in this case where **John Murphy, M.D., and the Agency were the defendants, the case was settled out of court for a sum of $ 297,154.00 on August 28, 2000.**

(b) whether we (Dr. Wadhwa and Ms. Finizie), as the Petitioners, are entitled to have these *false and untruthful statements* by Ms. Romero stricken from the record.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

The relevant and material abbreviated facts[3] set forth below are contained in my briefs for: Docket No. 09-2530 and Docket No. 08-3321. The factual allegations are contained in these *Briefs* (Appel. B.[4]) and include specific references to the *Appendix*[5] for Docket No. 09-2530 and Docket No. 08-3321, also previously filed.

---

[3] In *Oncale v. Sundowner Offshore Service, Incorporated*, 523 U.S. 75, 76, 118 S. Ct. 998, 1000 (1998), Justice Scalia, speaking for the unanimous court stated "The District Court having granted summary judgment for respondents, **we must assume the facts to be as alleged by petitioner....**" (Emphasis supplied).

[4] Refers to Brief of Appellant for Docket No. 09-2530 and Docket No. 08-3321.

[5] Refers to Appendix of Appellant. The appendix comprised of briefs from Docket No. 09-2530 and from Docket No. 08-3321 pursuant to Federal Rules of Civil Procedure.

Issue

The Appeals Court Panel Erred as a matter of law

a. by failing to address, reference or analyze my (Dr. Wadhwa's) material factual allegations,

b. by failing to draw inferences favorable to me (Dr. Wadhwa) from the limited allegedly uncontested material factual allegations that the Appeals Court Panel did address in its decision,

c. by failing to construe the evidence in a light most favorable to me (Dr. Wadhwa) in affirming the United States District Court for the Eastern District of Pennsylvania decision in that the Appeals Court Panel failed to address, consider or otherwise analyze my (Dr. Wadhwa's) material factual allegations.

The Decision of the Appeals Court Panel of the Third Circuit was a decision on the merits, not a decision as to whether there were issues of triable fact, as required by law.

CONCLUSION

For the foregoing reasons this Honorable Court should grant our petition for writ of certiorari and reverse the decision of the United States Court of Appeals for the Third Circuit raised in this proceeding.

Respectfully submitted,

/s/
Dom Wadhwa, M.D., *pro se* &
Sharon A. Finizie, R.N., *pro se*

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Dated: January 8, 2010

Exhibit A

Court Order, dated October 9, 2009, from the United States Court of Appeals for the Third Circuit

Case: 09-2530 Document: 00319849922 Page: 1
Date Filed: 10/09/2009

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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October 9, 2009

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RE: Dom Wadhwa, et al v. R. Nicholson, et al
Case Number: 09-2530
District Case Number: 2-07-cv-03301

ENTRY OF JUDGMENT

Today, **October 09, 2009** the Court has issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment
45 days after entry of judgment in a civil case if the United States is a party

Page Limits:
15 pages

Attachments:
a copy of the panel's dispositive order only. No other attachments are permitted without first obtaining leave from the Court. Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. If separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to a combined 15 page limit. If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of

a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,

Marcia M. Waldron,
Clerk

By:
Pamela Batts, Case Manager
267-299-4943

Case: 09-2530 Document: 00319849909 Page: 1
Date Filed: 10/09/2009

DLD-298 **August 27, 2009**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

C.A. No. **09-2530**

DOM WADHWA, M.D.;
SHARON A. FINIZIE, R.N.,

VS.

R. JAMES NICHOLSON, Secretary, Department of Veterans Affairs; MARGARET O'SHEA-CAPLAN; MARTIN HEYWORTH, M.D.; MICHAEL GRIPPI, M..D.; JOHN MURPHY, M.D.; CAROL PATTERSON; LINDA AUMILLER, R.N.; DEPT VETERANS AFFAIRS; JEFFREY KAUFMAN

Dom Wadhwa, M.D.,
Appellant
(E.D. Pa. Civ. No. 2:07-cv-03301)

Present: BARRY, AMBRO AND SMITH,
Circuit Judges

Submitted by the Clerk for possible dismissal due to a jurisdictional defect in the above-captioned case.

Respectfully,

Clerk

MMW/TWC/mw/pdb

ORDER

The foregoing appeal is dismissed for lack of jurisdiction. This Court "ordinarily has no jurisdiction to review on an interlocutory basis a district court's failure to certify a case for review," Saber v. FinanceAmerica Credit Corp., 843 F.2d 697, 702 (3d Cir. 1988), and Appellant fails to establish that the present case should be treated differently from Saber. Moreover, to the extent Appellant seeks to renew his challenge to the District Court's June 23, 2008 order dismissing a subset of his claims (or the court's related order, entered on July 25, 2008, denying his motion for reconsideration), we lack jurisdiction to review such a challenge at this time for the reasons given in our order dismissing Appellant's earlier appeal. See Wadhwa v. Nicholson, No. 08-3321 (order entered on Dec. 15, 2008).

By the Court,

/s/D. Brooks Smith
Circuit Judge

Dated: October 9, 2009

PDB/cc: Mr. Dom Wadhwa, MD
Ms. Sharon A. Finizie
Jacqueline C. Romero, Esq.

Exhibit B

Court Order, entered March 25, 2009, which denied Direct Entry Judgment for the Court Order, entered June 23, 2008, from the United States District Court for the Eastern District of Pennsylvania*

**Please note: This Court Order dismissed three independent lawsuits consolidated after ex-parte communication by defendant's Counsel with the Chief Judge.*

Therefore, Saber v. Finance America Credit Corp., 843, F.2d 697, 702 (3d Cir. 1988) does not apply here.

Case 2:07-cv-03301-MAM Document 83
Filed 03/25/2009 Page 1 of 1

IN THE UNITED STATES
DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA

DOM WADHWA, M.D.
CIVIL ACTION NO. 07-3301

v.

R. JAMES NICHOLSON

ORDER

AND NOW, this 25th day of March, 2009, upon consideration of the plaintiffs' Request for Reconsideration for Direct Entry Judgment Filed December 20, 2008, For Court Order Dated June 23, 2008, (Docket No. 81), IT IS HEREBY ORDERED that said motion is DENIED.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.

Exhibit C

Memorandum and Order, dated June 20, 2008, from the United States District Court for the Eastern District of Pennsylvania**

**Please note:
Memorandum and Order, dated June 20, 2008 were docketed on June 23, 2008.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DOM WADHWA, M.D.

CIVIL ACTION
NO. 07-3301

v.

R. JAMES NICHOLSON

MEMORANDUM AND ORDER

McLaughlin, J. June 20, 2008[6]

Dr. Dom Wadhwa has filed four pro se complaints against the United States Department of Veteran Affairs Philadelphia Medical Center ("VA"): Civil Action Nos. 07-2677; 07-2750; 07-2997; and 07-3301. In one of those cases, Civil Action No. 07- 2750, Sharon A. Finizie, a nurse at the VA, is also a plaintiff. The Court has consolidated all four cases under Civil Action No. 07-3301.

The government has moved to dismiss all of the cases and the Court heard oral argument on the motions on February 29, 2008. After oral argument, Dr. Wadhwa submitted additional documents and argument, and the VA responded to that material.

---

[6] Please note: **Memorandum and Order, dated June 20, 2008 were docketed on June 23, 2008.**

The four complaints recount a series of employment disputes between Dr. Wadhwa and the VA. Each of the complaints alleges discrimination on the basis of race, national origin, color, and age, as well as retaliation for the filing of various EEOC claims. One of the cases, Civil Action No. 07-2997, also alleges unfair labor practices. In his opposition to the motion to dismiss and at oral argument, Dr. Wadhwa said that he did not mean to bring an unfair labor practice claim and that he meant to bring a Bivens action in Civil Action No. 07-2750.

Dr. Wadhwa has filed a series of EEOC complaints during the last several years against the VA. With respect to only one of these was a right to sue letter issued: 2003-0642-2007102108 ("2108")[7]. In that case, Dr. Wadhwa alleged that the VA, in reprisal for previous EEO activity, subjected him to harassment in the following situations:

a. On December 22, 2005, the Patient Advocate sent the complainant an email in which he questioned the complainant's course of action in the treatment of a patient.

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[7] In one other EEOC complaint, 200J06102007101312, EEOC denied the plaintiff's motion for reconsideration on November 3, 2007. Dr. Wadhwa, however, filed an appeal with the United States Merit Systems Protection Board (MSPB Appeal No. 200702424), which remains pending at the administrative level.

b. On January 4, 2006, a patient was scheduled to complainant's clinic with Functional Capacity Assessment forms to be completed by complainant.
c. Fabricated, inaccurate, and untruthful data was being compiled by the Transfer Review Committee for a response to complainant's EEO cases when on December 29, 2005, a patient previously assigned to the complainant was reassigned to him, and on January 5, 2006, a patient who was hostile and a substance user was assigned to complainant.
d. On January 10, 2006, the complainant was informed that the Patient Advocate stated that the complainant's not writing a patient an order for incontinent pads was "patient abuse."
e. On January 13, 2006, in regard to a Functional Capacity Assessment, Patient G asked the complainant if he could see anything wrong with his arms as he swung them in the air, and told the complainant that he would see complainant in court.

The Court has compared the claims in the various complaints against the exhausted claims in 2108 and concludes that only Civil Action No. 07-3301 contains any claims that are within FAD 2108.

The issues alleged in Civil Action No. 07-2677 are:
1. August 2001 low proficiency reports
2. November 2004 proposed reprimand
3. January 2005 actual reprimand
4. December 2005 unsatisfactory proficiency report

5. July 2006 proposed 14-day suspension upgraded to proposed removal
6. December 2006 directed reassignment
7. January 2007 assigned C&P duties at VA
8. April 2007 reprimand

They are not fairly within the scope of FAD 2108.

The issues alleged in Civil Action No. 07-2750 are:
1. Reassignment from clinical practice to C&P duties
2. Investigation of alleged theft of government property

They are not fairly within the scope FAD 2108.

Dr. Wadhwa and Sharon Finizie claim that they intended to bring a Bivens action in connection with the investigation of the alleged theft of government property that form the basis of Civil Action No. 07-2750. The original complaint in Civil Action No. 07-2750 did not allege a Bivens action, however. The Court will dismiss the claims in this complaint but has allowed the plaintiffs to file a Bivens action. They have done so. Docket No. 32.

The issues alleged in Civil Action No. 07-2997 are:
1. January 2007 reassignment to non-clinical duties at VA
2. Refused access to VA
3. July 2007, VA criticized C&P evaluations and permitted an RN to do so as well

4. Denial of performance pay
5. Rated Wadhwa with high satisfactory performance rating to ensure that he remain in C&P position
They are not fairly within the scope of FAD 2108.

In Civil Action No. 07-3301, Dr. Wadhwa complains about four events: his assignment to the C&P section; the reprimands he received in 2004 and 2005; certain accusations of patient abuse that occurred in January 2006; and the failure to offer pre-complaint counseling in 2007. The allegation of accusations of patient abuse in January 2006 is within the scope of final agency decision on 2108. The other issues are not.

With respect to the January 2006 accusation of patient abuse, the Court holds that it does not rise to the level of an adverse employment action, which is a requirement for retaliation. A reasonable employee would not find that the fact that the patient advocate stated that certain conduct was patient abuse was so materially adverse that it would deter someone from making or supporting a charge of discrimination.[8]

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[8] According to an uncontradicted statement by the defendant, the patient advocate is an employee of the VA but is not in a managerial capacity. Tr. 2/29/08 Oral Arg. At 36-37.

To state a valid claim for retaliation, the plaintiff must allege that he was subjected to an action that a reasonable employee would have found materially adverse, that is, that the action might have dissuaded a reasonable worker from making or supporting a charge of discrimination. Burlington Northern & Santa Fe Ry. Co. v. White, 548 U.S. 53, 57 (2006).

The Supreme Court emphasizes that "material adversity" is required and that "trivial harms . . . petty slights, minor annoyances, and simple lack of good manners will not create such deterrence." The standard is an objective, not a subjective one. Id. at 68.

"The anti-retaliation provision protects an individual not from all retaliation, but from retaliation that produces an injury or harm." Id. at 67. The conduct that Dr. Wadhwa alleges here does not rise to the level of conduct that would dissuade a reasonable working from making or supporting a charge of discrimination. Further, the patient advocate was not Dr. Wadhwa's supervisor and appears to have been simply passing along a complaint made by a patient. Nor is this allegation sufficient to make out a hostile work environment claim.

To state a valid claim for a hostile work environment, the plaintiff must allege, among other things, that he suffered "harassing behavior sufficiently severe or pervasive to alter the conditions of [his] employment." Pa. State Police v. Suders, 542 U.S. 129, 133 (2004)

(internal quotations omitted); see also Jensen v. Potter, 435 F.3d 444, 449 & n.3 (3d Cir. 2006).

The Supreme Court has stated that "isolated incidents (unless extremely serious) will not amount to discriminatory changes of the terms and conditions of employment." Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998). Receiving a single allegation of patient abuse from a patient advocate is not "sufficiently severe or pervasive to alter the conditions of [his] employment.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DOM WADHWA, M.D.

CIVIL ACTION
NO. 07-3301

v.

R. JAMES NICHOLSON

ORDER

AND NOW, this 20th day of June, 2008[9], upon consideration of the defendant's motion to dismiss (Docket No. 13), plaintiffs' opposition, and after a hearing on February 29, 2008, IT IS HEREBY ORDERED that said motion is GRANTED in part and denied in part for the reasons stated in a memorandum of today's date.

IT IS FURTHER ORDERED that all claims in all of the cases consolidated in 07-3301 are dismissed except for the "Bivens Action" 07-2750.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.

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[9] Please note: **Court Order, dated June 20, 2008 was docketed on June 23, 2008.**

Appendix
for
Docket No. 09-2530 &
Docket No. 08-3321

*** Please note:**
Docket No. 08-3321 Wadhwa v. Nicholson was returned by the United States Supreme Court for a rehearing at the United States Court of Appeals for the Third Circuit and this case reassigned as Docket No. 09-2530 in June 2009.

Case: 09-2530 Document: 00319643851
Page: 1 Date Filed: 06/02/2009

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FOR THE THIRD CIRCUIT

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June 2, 2009

Dom Wadhwa, MD
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Philadelphia, PA 19104

RE: Dom Wadhwa, et al v. R. Nicholson, et al.
Case Number: 09-2530
(E. D. Pa. Civ. No.: 2-07-cv-03301)

To all parties:

This will advise you that the above-captioned appeal will be submitted to a panel of this Court for possible dismissal due to a jurisdictional defect. It appears that this Court may lack appellate jurisdiction for the following reason(s):

To the extent you are challenging the District Court Order dated March 25, 2009, this order may not be reviewable at this time by a court of appeals. Only final orders of the district courts may be reviewed. 28 U.S.C. §1291 (enclosed).

Jurisdictional defects cannot be remedied by the court of appeals. The parties may submit written argument in support of or in opposition to dismissal of the appeal for lack of appellate jurisdiction. Any response regarding jurisdiction must be in proper form (original and three copies, with certificate of service), and must be filed within 21 days from the date of this letter.

Upon expiration of the response period, the case will be submitted to the Court for consideration of the jurisdictional question. The parties will be advised of any Order issued in this matter.

Very truly yours,
Marcia M. Waldron,
Clerk

By Jo-Ann Williams, Administrative Assistant

cc: Virginia A. Gibson, Esq.
Sonya F. Lawrence, Esq.
Jacqueline C. Romero, Esq.

THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT
21400 U.S. Courthouse
601 Market Street, Philadelphia,
PA 19106-1790

Dom Wadhwa, M.D., *pro se*
Petitioner

Docket No. 09-2530

v.

Department of Veterans Affairs,
Respondent

Petitioners' Response To Jurisdiction for Petition for Review, Dated June 2, 2009

We, Petitioners, Dom Wadhwa, M.D. ("Dr. Wadhwa"), *pro se*, and Sharon A. Finizie, R.N., *pro se*, are in receipt of a letter, dated June 2, 2009, from Marcia M. Waldron, Clerk of Court, United States Court of Appeals for the Third Circuit. **(Exhibit A)**

We respectfully request this Honorable Court to accept our Petition for Review for the three dismissed civil action lawsuits, Civil Action Nos. 07-2677[10], 07-2997[11] and 07-3301[12]

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[10] Civil Action No. 07-2677, Filed June 27, 2007 (assigned to Honorable Mary A. McLaughlin) was in response to "Notice of Final Agency Decision of the EEO Complaint for Dom Wadhwa, M.D., EEO Case No. 200J-0610-2007101312, Filed on March 16, 2007." In this decision, there was a "Right To File A Civil Action" notice which stated that Dr. Wadhwa had within 90 days of receipt of this final decision (received on April 9, 2007) to

file a civil action. This is the reason why Civil Action No. 07-2677 was filed. The EEO Case No. 200J-0610-2007101312, Filed on March 16, 2007 was regarding my involuntary return from VA NIHCS (VA Northern Indiana Health Care System) to PVAMC ordered on December 19, 2006 by William F. Feeley, VA Deputy Undersecretary for Health for Operations and Management. Mr. Feeley's December 19, 2006 order was based on *untruthful* and *erroneous* information provided to Mr. Feeley by the Agency officials at PVAMC. Mr. Feeley, in making his decision, was *deliberately* misled by the Agency officials at PVAMC. Mr. Feeley was misinformed by the Agency officials at PVAMC that I had voluntarily departed from PVAMC to VA NIHCS to "escape a pending disciplinary action at PVAMC." This is not the truth. There was no disciplinary action pending against me when I involuntarily departed from PVAMC. In fact, on October 12, 2006, two days prior to my involuntary departure from PVAMC to VA NIHCS, Dr. Murphy stated to me, "You better take the job in Indiana (VA NIHCS), because you are off the payroll (at PVAMC) as of Saturday, October 14, 2006." Therefore, on October 14, 2006, I was forced to involuntarily depart from PVAMC to VA NIHCS. On October 12, 2006, I notified, via e-mail, the VISN 4 Director and the Agency officials in Washington, D.C. of my involuntary departure from PVAMC to VA NIHCS. Upon my arrival at VA NIHCS in October 2006, I was placed on 'administrative leave' after three workdays and then in December 2006, I was ordered by Mr. Feeley to return back to my previous assignment as an attending physician in Primary Care at PVAMC.

[11] Civil Action No. 07-2997, Filed on July 23, 2007 (assigned to Honorable Juan Sanchez) was in response to the actions of Dr. Wadhwa's supervisors, (Dr. John Murphy and Dr. Michael Grippi. In retaliation against Dr. Wadhwa, sixteen days after filing the FALSE ARREST Civil Action No. 07-2750, these two supervisors drafted a high satisfactory interim proficiency report on July 19, 2007, to be used as a justification to permanently assign Dr. Wadhwa to perform "clerical

duties" in the Compensation & Pension section for the rest of his professional career, instead of to perform clinical duties as an attending physician in Primary Care within the Department of Veterans Affairs. Thus, Dr. Wadhwa's Civil Action No. 07-2997, Filed on July 23, 2007 is closely related to the False Arrest Civil Action No. 07-2750, Filed on July 3, 2007 and it has no relationship to Civil Action No. 07-2677, Filed on June 27, 2007.

[12] Civil Action No. 07-3301, Filed on August 10, 2007 (assigned to Honorable Mary A. McLaughlin) was in response to "Notice of Final Agency Decision of the EEO Complaint for Dr. Wadhwa, Case No. 2003-0642-2007102108, Filed on May 7, 2007." In this decision, there was a "Right To File A Civil Action" notice which stated that Dr. Wadhwa had within 90 days of receipt of this final decision (received on July 31, 2007) to file a civil action. This is the reason why Civil Action No. 07-3301 was filed. In August 2007, the Agency dismissed Agency Case No. 2003-0642-2007102108, Filed on May 7, 2007, for "failure to state a claim" without conducting an investigation on a very serious charge of *patient abuse* against me by my supervisors, Dr. Murphy, Dr. Grippi and nurse, Ms. Kathleen Craige. On March 30, 2007, I received a letter from ORM which stated that the Final Agency Decision letter dated January 19, 2006, is Reversed and Remanded to the Agency by order of the US Equal Employment Opportunity Commission, Office of Federal Operations, dated February 8, 2007 for the following EEO Complaints:

1. On December 22, 2005, the Patient Advocate sent the complainant an email in which he questioned the complainant's course of action in the treatment of a patient.
2. On January 4, 2006, a patient was scheduled to complainant's clinic with Functional Capacity Assessment forms to be completed by complainant.

that were consolidated with Civil Action No. 07-2750, and dismissal of R. James Nicholson or Current Secretary from the remaining Civil Action No. 07-2750.[13]

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3. Fabricated, inaccurate, untruthful data was being compiled by the Transfer Review Committee for a response to complainant's EEO cases when on December 29, 2005, a patient previously assigned to the complainant was reassigned to him, and on January 5, 2006, a patient who was hostile and substance user was assigned to complainant.
4. On January 10, 2006, the complainant was informed that the Patient Advocate stated that he complainant's not writing a patient an order for incontinent pads was "patient abuse."
5. On January 13, 2006, in regard to a Functional Capacity Assessment, Patient G asked the complainant if he could see anything wrong with his arms as he swung them in the air, and told the complainant that he would see complainant in court.

Please note: On January 10, 2006, the Patient Advocate's Office alleged "PATIENT ABUSE" for the care that I provided to a patient. PATIENT ABUSE is a very serious false allegation which is now being made against me by the agency and Dr. Murphy. This could result in a disciplinary action and ultimately to termination of my employment based on this false allegation.

[13] Civil Action No. 07-2750, Filed on July 3, 2007 (assigned to Honorable Juan Sanchez) was in response to the FALSE ARREST of Dr. Wadhwa and Ms. Finizie on June 26, 2007. This False Arrest Case had NOTHING to do with Civil Action No. 07-2677, Filed on June 27, 2007. The False Arrest Civil Action No. 07-2750 was NOT FILED IN RETALIATION for Civil Action No. 07-2677 (as INACCURATELY described by Ms. Romero in her "Memorandum in Support of Defendant's Motion to Consolidate"). On Saturday, June 23, 2007, while off

On August 28, 2008, Ms. Waldron sent a similar letter regarding the same three civil action lawsuits, Civil Action Nos. 07-2677, 07-2997 and 07-3301, and a possible dismissal of this case due to a "Jurisdiction defect." The same case was previously docketed in the United States Court of Appeals under Docket No. 08-3321. The Jurisdictional issue was discussed in my (Dr. Wadhwa's) response on October 4, 2008. **(Exhibit B)**

I (Dr. Wadhwa) requested a Direct Entry Judgment Order from Honorable Mary A. McLaughlin on two separate occasions for the three dismissed civil action lawsuits, Civil Action Nos. 07-2677, 07-2997, and 07-3301. On March 25, 2009, Judge McLaughlin denied my request for Direct Entry Judgment for the three dismissed civil action lawsuits, Civil Action Nos. 07-2677, 07-2997, and 07-3301.

Judge McLaughlin's March 25, 2009 Court Order to deny direct entry judgment for the three dismissed civil action lawsuits, Civil Action Nos. 07-2677, 07-2997, and 07-330, was

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duty, three days prior to my *false* arrest on June 26, 2007, I was in my office at the medical center and with the help of a co-worker I was reviewing information for my involuntary non-clinical assignment in the C&P Section. I made at least one trip to my car in the VA garage to bring in additional personal items. I was charged by Margaret O'Shea-Caplan, Associate Director of Finance at PVAMC, and by the Agency's officials for alleged theft of VA property (for taking my personal items back to my car in the VA garage). This charge was purely *pretextual* in nature and it was made in reprisal for my protected disclosure to the VA IG's Office on July 23, 2006 and for my ongoing EEO activity.

issued after the 21-day deadline had passed to file my (Dr. Wadhwa's) request for reconsideration of my appeal with the United States Court of Appeals for the Third Circuit.

On April 12, 2009, I (Dr. Wadhwa) filed my appeal with the Supreme Court of the United States for the three dismissed civil action lawsuits, Civil Action Nos. 07-2677, 07-2997, and 07-3301. On April 21, 2009, I (Dr. Wadhwa) was notified by the Clerk of Court for the Supreme Court of the United States that I had to resubmit my appeal for the three dismissed civil action lawsuits, Civil Action Nos. 07-2677, 07-2997, and 07-3301, to the United States Court of Appeals for the Third Circuit. This led to reassignment of this same case to the United States Court of Appeals for the Third Circuit under a different case number, Civil Action No. 09-2530.

Also, on May 8, 2009, Judge McLaughlin issued a Court Order that dismissed R. James Nicholson or the Current VA Secretary from the one remaining case, Civil Action No. 07-2750, in the consolidated Civil Action No. 07-3301.

We, Dr. Wadhwa and Ms. Finizie, *pro se* plaintiffs, hereby assert that the Attorneys for the Agency, Jacqueline Romero, Esquire and Stacey Conroy, Esquire ("Agency's Attorneys") have worked collaboratively and desperately to launch an elaborate scheme in a *deliberate* effort to *subterfuge* the true facts in the remaining portion of consolidated civil action lawsuit, Civil Action No. 07-3301.

Through extensive legal maneuvering, as exemplified by a barrage of exhaustive,

comprehensive, and largely inaccurate documents, the Agency's Attorneys have thus far produced, and recently submitted to Judge McLaughlin, the following three motions:

1. Defendants' Motion to Strike and to Dismiss Defendant R. James Nicholson, dated March 2, 2009
2. Defendants' Amended Motion to Strike and to Dismiss the New Second Amended Consolidated Complaint Without Prejudice, dated March 5, 2009
3. Defendants' Opposition to Plaintiffs' Motion to Compel, dated March 11, 2009.

It is obvious from the submission of these three documents to Judge McLaughlin, that the clear intention of the Agency's Attorneys is to distort the facts, in order to confuse and mislead Judge McLaughlin, so that the real events and the true issues are, for the purpose of the Agency's Attorneys, conveniently obscured. The Agency's Attorneys hope that by repeating long, detailed, and inaccurate accounts of information related to this case, that eventually the version of the facts by the Agency's Attorneys will be accepted as genuine facts. For example, the Agency's Attorneys erroneously state in both the March 5, 2009 and the March 11, 2009 documents that the named Agency officials at PVAMC are being sued in their individual capacities, which has never been the case. Also, the May 13, 2009 Court Order prematurely dismissed R. James Nicholson from the Consolidated Civil Action No. 07-3301. Thus, the May 13, 2009 Court

Order was added for review by the United States Court of Appeals for the Third Circuit.

Based on the above facts, 28 U.S.C. § 1291 referred to in Ms. Waldron's letter of June 2, 2009, does not apply in our situation.

Respectfully submitted,

Dom Wadhwa, M.D., *pro se* and Sharon A. Finizie, R.N., *pro se*

Date: July 27, 2009

Home Addresses of Petitioners:
Dom Wadhwa, M.D., 215 E Camden Ave, H-13, Moorestown, NJ 08057
Sharon A. Finizie, R.N., 709 Foxcroft Drive, Cinnaminson, NJ 08077

THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT
21400 U.S. Courthouse
601 Market Street, Philadelphia,
PA 19106-1790

Dom Wadhwa, M.D., *pro se*
Petitioner

Docket No. 09-2530

v.

Department of Veterans Affairs,
Respondent

Petitioners' Request for Rehearing with Oral Argument

Pursuant to the United States Court of Appeals for the Federal Circuit Rules of Practice, we, Dom Wadhwa, M.D., *pro se,* and Sharon A. Finizie, R.N. *pro se* hereby file with this Court a *Petition for Rehearing with Oral Argument* on the issues that are the subject of the petition for review, Docket No. 09-2350,[14] for the U.S. District Court for the Eastern District of Pennsylvania Court Order, dated June 23, 2008, and this Court's related Order, dated July 25, 2008.

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[14] Please note: Docket No. 08-3321 Wadhwa v. Nicholson was returned by the United States Supreme Court for a rehearing at the United States Court of Appeals for the Third Circuit and reassigned as Docket No. 09-2530 in June 2009.

This Honorable Court should hold a hearing with oral argument for Case No. 09-2530, because the petition for review raises issues that are critical for us (Dr. Wadhwa and Ms. Finizie), as *pro se* petitioners, to the successful outcome of our appeal for this case.

The October 9, 2009 Court Order issued by Honorable D. Brooks Smith, Circuit Judge for the United States Court of Appeals for the Third Circuit, states "*This Court 'ordinarily has no jurisdiction to review on an interlocutory basis a district court's failure to certify a case for review,' Saber v. Finance America Credit Corp., 843 F.2d 697, 702 (3d Cir. 1988)" and that I (Dr. Wadhwa) as Appellant had failed to establish the present case should be addressed differently from Saber.*" **(Exhibit A)**

The following are the reasons why our (Dr. Wadhwa's and Ms. Finizie's) case should be addressed differently than Saber:

1. Saber does not have three independent cases that were consolidated by the defendant's attorneys with another case and then, dismissed by the Administrative Judge (AJ) based on *false and untruthful* information provided to the District Court. However, this was the case in our situation. In October 2007, Jacqueline Romero, Esquire, Trial Attorney and Respondent for the defendant, made *ex-parte* communications with Honorable Harvey Bartle III in October 2007 to consolidate my (Dr. Wadhwa's) three independent civil action

lawsuits, Civil Action Nos. 07-2677[15], 07-2997[16] and 07-3301[17] with our (Dr. Wadhwa's and Ms. Finizie's) Civil Action No. 07-2750.

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[15] Civil Action No. 07-2677, Filed June 27, 2007 (assigned to Honorable Mary A. McLaughlin) was in response to "Notice of Final Agency Decision of the EEO Complaint for Dom Wadhwa, M.D., EEO Case No. 200J-0610-2007101312, Filed on March 16, 2007." In this decision, there was a "Right To File A Civil Action" notice which stated that Dr. Wadhwa had within 90 days of receipt of this final decision (received on April 9, 2007) to file a civil action. This is the reason why Civil Action No. 07-2677 was filed. The EEO Case No. 200J-0610-2007101312, Filed on March 16, 2007 was regarding my involuntary return from VA NIHCS (VA Northern Indiana Health Care System) to PVAMC ordered on December 19, 2006 by William F. Feeley, VA Deputy Undersecretary for Health for Operations and Management. Mr. Feeley's December 19, 2006 order was based on *untruthful* and *erroneous* information provided to Mr. Feeley by the Agency officials at PVAMC. Mr. Feeley, in making his decision, was *deliberately* misled by the Agency officials at PVAMC. Mr. Feeley was misinformed by the Agency officials at PVAMC that I had voluntarily departed from PVAMC to VA NIHCS to "escape a pending disciplinary action at PVAMC." This is not the truth. There was no disciplinary action pending against me when I involuntarily departed from PVAMC. In fact, on October 12, 2006, two days prior to my involuntary departure from PVAMC to VA NIHCS, Dr. Murphy stated to me, "You better take the job in Indiana (VA NIHCS), because you are off the payroll (at PVAMC) as of Saturday, October 14, 2006." Therefore, on October 14, 2006, I was forced to involuntarily depart from PVAMC to VA NIHCS. On October 12, 2006, I notified, via e-mail, the VISN 4 Director and the Agency officials in Washington, D.C. of my involuntary departure from PVAMC to VA NIHCS. Upon my arrival at VA NIHCS in October 2006, I was placed on 'administrative leave' after three workdays and then in December 2006, I was ordered by

Mr. Feeley to return back to my previous assignment as an attending physician in Primary Care at PVAMC.

[16] Civil Action No. 07-2997, Filed on July 23, 2007 (assigned to Honorable Juan Sanchez) was in response to the actions of Dr. Wadhwa's supervisors, (Dr. John Murphy and Dr. Michael Grippi. In retaliation against Dr. Wadhwa, sixteen days after filing the FALSE ARREST Civil Action No. 07-2750, these two supervisors drafted a high satisfactory interim proficiency report on July 19, 2007, to be used as a justification to permanently assign Dr. Wadhwa to perform "clerical duties" in the Compensation & Pension section for the rest of his professional career, instead of to perform clinical duties as an attending physician in Primary Care within the Department of Veterans Affairs. Thus, Dr. Wadhwa's Civil Action No. 07-2997, Filed on July 23, 2007 is closely related to the False Arrest Civil Action No. 07-2750, Filed on July 3, 2007 and it has no relationship to Civil Action No. 07-2677, Filed on June 27, 2007.

[17] Civil Action No. 07-3301, Filed on August 10, 2007 (assigned to Honorable Mary A. McLaughlin) was in response to "Notice of Final Agency Decision of the EEO Complaint for Dr. Wadhwa, Case No. 2003-0642-2007102108, Filed on May 7, 2007." In this decision, there was a "Right To File A Civil Action" notice which stated that Dr. Wadhwa had within 90 days of receipt of this final decision (received on July 31, 2007) to file a civil action. This is the reason why Civil Action No. 07-3301 was filed. In August 2007, the Agency dismissed Agency Case No. 2003-0642-2007102108, Filed on May 7, 2007, for "failure to state a claim" without conducting an investigation on a very serious charge of *patient abuse* against me by my supervisors, Dr. Murphy, Dr. Grippi and nurse, Ms. Kathleen Craige. On March 30, 2007, I received a letter from ORM which stated that the Final Agency Decision letter dated January 19, 2006, is Reversed and Remanded to the Agency by order of the US Equal Employment Opportunity Commission, Office

Chief Judge Harvey Bartle III granted Ms. Romero her request based on this *ex-parte* communication with him to consolidate my (Dr. Wadhwa's) three independent lawsuits with our (Dr. Wadhwa's and Ms. Finizie's) Civil Action

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of Federal Operations, dated February 8, 2007 for the following EEO Complaints:

1. On December 22, 2005, the Patient Advocate sent the complainant an email in which he questioned the complainant's course of action in the treatment of a patient.
2. On January 4, 2006, a patient was scheduled to complainant's clinic with Functional Capacity Assessment forms to be completed by complainant.
3. Fabricated, inaccurate, untruthful data was being compiled by the Transfer Review Committee for a response to complainant's EEO cases when on December 29, 2005, a patient previously assigned to the complainant was reassigned to him, and on January 5, 2006, a patient who was hostile and substance user was assigned to complainant.
4. On January 10, 2006, the complainant was informed that the Patient Advocate stated that he complainant's not writing a patient an order for incontinent pads was "patient abuse."
5. On January 13, 2006, in regard to a Functional Capacity Assessment, Patient G asked the complainant if he could see anything wrong with his arms as he swung them in the air, and told the complainant that he would see complainant in court.

Please note: On January 10, 2006, the Patient Advocate's Office alleged "PATIENT ABUSE" for the care that I provided to a patient. PATIENT ABUSE is a very serious false allegation which is now being made against me by the agency and Dr. Murphy. This could result in a disciplinary action and ultimately to termination of my employment based on this false allegation.

No. 07-2750 [18] and the District Court designated the consolidation of the four cases as Consolidated Civil Action No. 07-3301.

Subsequently, Ms. Romero used legal maneuvering and filed a motion to have these three independent lawsuits dismissed by Mary A. McLaughlin, Judge, (AJ) from the Consolidated Civil Action No. 07-3301. The AJ issued a Court Order, dated June 23, 2008 **(Exhibit B)** (and a related Court Order entered on July 25, 2008) dismissing my (Dr. Wadhwa's) three independent lawsuits based on *False and untruthful* information provided by Agency Officials at the Philadelphia VA

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[18] Civil Action No. 07-2750, Filed on July 3, 2007 (assigned to Honorable Juan Sanchez) was in response to the FALSE ARREST of Dr. Wadhwa and Ms. Finizie on June 26, 2007. This False Arrest Case had NOTHING to do with Civil Action No. 07-2677, Filed on June 27, 2007. The False Arrest Civil Action No. 07-2750 was NOT FILED IN RETALIATION for Civil Action No. 07-2677 (as INACCURATELY described by Ms. Romero in her "Memorandum in Support of Defendant's Motion to Consolidate"). On Saturday, June 23, 2007, while off duty, three days **prior to my *false* arrest on June 26, 2007**, I was in my office at the medical center and with the help of a co-worker I was reviewing information for my involuntary non-clinical assignment in the C&P Section. I made at least one trip to my car in the VA garage to bring in additional personal items. I was charged by Margaret O'Shea-Caplan, Associate Director of Finance at PVAMC, and by the Agency's officials for alleged theft of VA property (for taking my personal items back to my car in the VA garage). This charge was purely *pretextual* in nature and it was made in reprisal for my protected disclosure to the VA IG's Office on July 23, 2006 and for my ongoing EEO activity.

Medical Center ('PVAMC' or 'Agency') for this case.

2. Saber states: *"The Federal Rules of Civil Procedure require a district court directing the entry of judgment as to one or more, but fewer than all, of the claims or parties to make 'an express determination that there is no just reason for delay' and to issue 'an express direction for the entry of judgment.' Fed.R.Civ.P. 54(b). Without this certification, a district court order will not be considered final."*

In our (Dr. Wadhwa's and Ms. Finizie's) case, the December 23, 2008 direct entry judgment and the March 19, 2009 request for reconsideration of the denial of direct entry judgment for my (Dr. Wadhwa's) three independent civil action lawsuits in the Consolidated Civil Action No. 07-3301 was requested from the AJ and these requests were denied. The AJ offered no explanation for denial of our request for direct entry judgment on March 4, 2009 and our request for reconsideration of the denial of direct entry judgment on March 25, 2009.

3. Federal Rules of Appellate Procedure state that the United States Court of Appeals will hold oral argument unless exceptional circumstances make oral argument impractical or inadvisable. No such circumstances exist here.

In fact, the opposite is true; oral argument is appropriate here, because of the importance of

the issues raised by the petition for review. Obviously, the petition for review is of critical importance to us (Dr. Wadhwa and Ms. Finizie) as it may affect the outcome of our appeal to this Court.

If the AJ's June 23, 2008 Court Order (and a related Court Order entered on July 25, 2008) dismissing the three independent lawsuits based on *false and untruthful* information provided by Agency Officials at PVAMC is upheld based solely on the content of Ms. Romero's brief, the Court will be unable to reach conclusions based on facts.

For example, the June 23, 2008 Court's Memorandum and Order states (based on Ms. Romero's "Motion to Dismiss or in the Alternative Summary Judgment"):

"In one other EEOC complaint, 200J06102007101312, the EEOC denied the plaintiff's motion for reconsideration on November 3, 2007. Dr. Wadhwa, however, filed an appeal with the United States Merit Systems Protection Board (MSPB Appeal No.200702424), which remains pending at the administrative level."

This is a bold-faced lie provided by Ms. Conroy and Ms. Romero to the AJ through *ex parte* communication. This bold-faced lie is being perpetuated as "a fact" by the AJ in her June 23, 2008 Memorandum and Order for my (Dr. Wadhwa's) current

appeal to this Honorable Court, Consolidated Civil Action No. 07-3301.

Please note: I (Dr. Wadhwa) have not had an EEOC Hearing since filing of my (Dr. Wadhwa's) first EEO discrimination complaint on December 20, 2004 against the Agency Officials at PVAMC. The EEO cases have been consolidated, remanded, or dismissed. The remanded EEO cases pending an EEO Hearing since October 2008 are EEO Case Nos. 200H-0642-2005100051, 200H-0642-2005101684, 200H-0642-05100781, 200H-0642-005100161, and 200H-0642-2005100318. The EEO Case No. 200H-0642-2008102059 and EEO Case No. 2004-00642-2008100615 were dismissed, because we (Dr. Wadhwa and Ms. Finizie) filed our *False Arrest* Civil Action No. 07-2750 on July 3, 2007.

Furthermore, on May 29, 2008, there was a limited hearing on one single issue by the Merit Systems Protection Board (MSPB or Board), as to whether or not my (Dr. Wadhwa's) assignment to the Compensation & Pension (C&P) Section was done in retaliation for my (Dr. Wadhwa's) whistleblower disclosure of safety issues at PVAMC to the VA IG's Office on July 23, 2006. The MSPB case did not discuss my Directed Reassignment Order by the Agency in Civil Action No. 07-2677, filed on June 27, 2007. On July 14, 2008, I (Dr. Wadhwa) filed a request for reconsideration to Judge McLaughlin to reinstate the Directed Reassignment Civil Action No. 07-2677, based on the initial decision by the MSPB (Docket No.

PH-1221-08-0019-W-1) on my whistleblower case, dated June 26, 2008. This request was denied.

Also, on May 29, 2008, during the MSPB 33 *(MSPB Appeal No.200702424)* or (Wadhwa1) Hearing, for the first time the Agency Officials at PVAMC, through Stacey Conroy, the Agency's Counsel, informed the MSPB AJ and me (Dr. Wadhwa) that the *false* performance appraisal rating regarding my clinical competence had been *rescinded* due to an *'administrative error.'* This document was used as the basis for my *permanent* reassignment to the C&P Section by the Agency's witnesses.

This statement is a **bold-faced lie** that was provided *ex- parte* by Ms. Conroy to the Board. The FY05 proficiency rating was <u>never</u> withdrawn by my (Dr. Wadhwa's) supervisors, Drs. John Murphy and Michael Grippi. If this rating was withdrawn in early 2006, why was I <u>not</u> provided with the fully satisfactory rating report? Why was this *untruthful and unsubstantiated* proficiency rating report from FY05 used in January 2007 by Drs. Murphy and Grippi to permanently assign me to the Compensation and Pension (C&P) Section?

This bold-faced lie is being <u>perpetuated</u> as "a fact" by Ms. Conroy. The genuine facts are, as follows:

Drs. Murphy's and Grippi's Performance Appraisal Narrative written about me (Dr. Wadhwa) on December 7, 2005, and included as part of my last annual proficiency report, contained untruthful and unsubstantiated statements and resulted in an unsatisfactory rating (FY 05 Rating Period). It stated, as follows:

(a) "A large proportion of his [Dr. Wadhwa's patients are dissatisfied with the carehe provides";

(b) "He receives many complaints through the Patient Advocate's office and other venues on a regular basis";

(c) "Many patients have requested to be transferred to other providers";

(d) "Nursing staff, the Patient Advocate, administrative personnel, and his supervisor spend undue amounts of time trying to deal with his unsatisfied patients";

(e) "Patients have described him as 'arrogant' and 'uncaring,' and say that he 'doesn't listen' and that he 'talks down to me'";

(f) "Because of the ongoing loss of patients, he has been unable to attain a full panel of patients despite being a full-time physician in this practice for over 4 years";

(g) "I [Dr. Murphy] have observed that patients with the most difficult problems are most likely to leave his [Dr. Wadhwa's] practice";

(h) "Patients have told me [Dr. Murphy] that Dr. Wadhwa actually has encouraged them to request another provider";

(i) "Other physicians in the practice complain that they have to pick up his [Dr. Wadhwa's] unsatisfied patients";

(j) "He [Dr. Wadhwa] has a smaller panel consisting of less difficult patients because of the continuing emigration of complex patients from his practice";

(k) "He [Dr. Wadhwa] continuously expressed an unwillingness to supervise and assist nurse practitioners in the practice";

(l) "[Dr. Wadhwa's] unwillingness to supervise the Nurse Practitioners in the practice";

(m) "When given a choice, the nurse practitioners choose not to discuss clinical issues with him [Dr. Wadhwa] as he is rarely very helpful to them"

(n) "Nurse practitioners have been unwilling to accept him [Dr. Wadhwa] as their supervisory physician because they think he is unhelpful and does not treat them with respect in the practice";

(o) "Because of this, the responsibility for supervising and assisting nurse practitioners in the practice falls disproportionately on the other physicians";

(p) "Many patients complain that he [Dr. Wadhwa] refuses to complete administrative forms for them, even though Departmental policy clearly states that this is one of the responsibilities of a primary care provider";

(q) "A number of consultant services complain that he [Dr. Wadhwa] continues to make inappropriate referrals to their service..... and making referrals before completing steps that should be done in primary care";

(r) "He [Dr. Wadhwa] will not listen when they [consultants] advise him on the appropriate procedures";

(s) "He [Dr. Wadhwa] sends many patients with erectile dysfunction to the Urology clinic without following established clinical guidelines before referral";

(t) "The pain management service has reported that he [Dr. Wadhwa] will not follow their recommendations after they see his patients";

(u) "Rehabilitation service complains that he [Dr. Wadhwa] sends patients to them to have forms completed which are generally completed by Primary Care physicians";

(v) "He [Dr. Wadhwa] frequently does not respond in a timely fashion to email and phone messages";

(w) "Dr. Wadhwa has isolated himself from his colleagues and most of his co-workers";

(x) He [Dr. Wadhwa] is generally unwilling to accept any advice or input from colleagues or his supervisor";

(y) He [Dr. Wadhwa] frequently speaks in angry tones or raised voice if anyone questions his decisions in any way";

(z) "He [Dr. Wadhwa] has frequently refused to meet with his supervisor, insisting that he [Dr. Wadhwa] wants to have his lawyer with him in order to meet";

(aa) "Dr. Wadhwa has extremely poor levels of patient satisfaction and his patients feel they are treated in a disrespectful manner";

(bb) "He [Dr. Wadhwa] engages in a number of practices which systematically limit the complexity and size of his practice, thus shifting more difficult work to his colleagues";

(cc) He [Dr. Wadhwa] does not relate in a professional manner with his supervisor or his peers";

(dd) "His [Dr. Wadhwa's] behaviors have been largely detrimental to the functioning of the practice and the morale of his co-workers"; and

(ee) "He [Dr. Wadhwa] has been unwilling to accept any input to improve his performance."

Dr. Murphy and Dr. Grippi did not provide me (Dr. Wadhwa) with documented evidence to support the above statements they recorded in this annual proficiency report. Dr. Murphy stated to me at the time he gave me this annual proficiency report that he does not have to provide me with documented evidence.

It should be noted that Michael Sullivan, former Medical Center Director at PVAMC, ordered Dr. Murphy and Dr. Grippi to rewrite this annual proficiency report as fully satisfactory in January of 2007. Dr. Murphy and Dr. Grippi did not do this. In the MSPB hearing, Case No. PH 1221-08-0019-W-1, on May 29, 2008, the Agency's attorney, Stacey Conroy, stated that this annual proficiency report was rescinded sometime in 2006. I (Dr. Wadhwa) was never informed of this personnel action. If this proficiency was, in fact, rescinded in 2006, why did Mr. Sullivan and Gerald Morelli, Director of Human Resources, not inform me of this personnel action in February 2007? Instead, I became aware sometime in March 2007 that Dr. Murphy and Dr. Grippi converted this annual proficiency report to an interim proficiency report after the Northern Indiana VA Medical became aware of the prohibited personnel practices being used by Dr. Murphy and by Dr. Grippi. Dr. Murphy was unable to initiate a Performance Improvement Plan for me, because the information in this

annual proficiency report is untruthful and unsubstantiated.

Please note:

Drs. Murphy's and Grippi's Performance Appraisal Narrative written about <u>another</u> physician (African American) in the C& P Section (C&P MD) contained <u>untruthful and unsubstantiated</u> statements on January 25, 2008, <u>similar</u> to those included in my (Dr. Wadhwa's) <u>last</u> annual proficiency report. This Performance Appraisal Narrative was included as part of the C&P MD's <u>last</u> annual proficiency report and resulted in a <u>low satisfactory</u> rating (FY 07 Rating Period). It stated, as follows:

(aa) "During the past year he (C&P MD) has failed to meet the quality standard in performing these (C&P) exams as designated by the Compensation and Pension Exam Program (CPEP). [The performance standard is a CPEP score of ≥ 90% on at least 90% of exams reviewed]";

(bb) "He (C&P MD) is the only member of the C&P team who consistently has not met the performance target for these measures";

(cc) "In addition, he (C&P MD) has failed to participate fully in the performance improvement activities which have helped other examiners achieve successful records on exam quality";

(dd) "He (C&P MD) has consistently stated that he (C&P MD) does not think that the CPEP quality program is important, and feels that he does an adequate job addressing all the exam elements that are required by the VA Regional Office";

(ee) "He (C&P MD) has refused to participate with the Quality Management nurse who reviews the exams of all C&P examiners";

(ff) "He (C&P MD) has also refused to adopt a systematic method of dictating C&P exam reports using the CPEP criteria as a guide. Because of this, he (C&P MD) frequently forgets to address certain required elements on exams, particularly on reports that include more than one exam type. All of the other examiners have adopted a systematic method and have found it very helpful in achieving 100% scores on the overwhelming majority of their exams";

(gg) "He (C&P MD) used to care for a limited number of primary care patients. During this past year, I [Dr. Murphy] had to remove him from this duty";

(hh) "He (C&P MD) was removed from this duty because of 1) consistently poor performance on performance measures (clinical reminder actions), 2) his (C&P MD's) unwillingness to see patients in the primary care area where he (C&P MD) and they (patients) would benefit from nursing services, and 3) his (C&P MD's) unwillingness to make efforts to schedule his primary care patients during his designated primary care sessions,

resulting in frequent interruptions during his scheduled C&P exams";

(ii) "During the past 3 years, he (C&P MD) has received complaints from several C&P patients about the quality and professional nature of his exams";

(jj) "In general, the patients complain that he (C&P MD) does not listen to them well, and doesn't perform much of an examination, even regarding body parts relevant to the C&P exam type requested";

(kk) "I [Dr. Murphy] have discussed these complaints with him and advised him (C&P MD) that he 1) is scheduled adequate time to listen to each patient's complaints in detail, and 2) should definitely perform appropriate examination of those organ systems or body parts relevant to the claim at hand."

Subsequently, Dr. Murphy and Dr. Grippi issued a reprimand to this physician in the C&P Section, allegedly for not following Dr. Grippi's order, similar to a reprimand they issued to me allegedly for not carrying out Dr. Murphy's order.

Please note: In January 2008, this African American physician was not provided with an explanation for the above statements documented in this annual proficiency report. Dr. Murphy and Dr. Grippi were planning to initiate a Performance Improvement Plan (PIP) for this African American physician based on these untruthful and unsubstantiated statements. Dr. Murphy and Dr. Grippi were

unable to initiate a Performance Improvement Plan for this African American physician. Dr. Murphy and Dr. Grippi have rescinded this African American physician's annual proficiency report and no Performance Improvement Plan was issued. The African American physician was offered no explanation by the Agency (just like the Agency rescinded my (Dr. Wadhwa's) annual proficiency report without notifying me).

Similarly, during the December 7, 2005 meeting with me (Dr. Wadhwa), Dr. Murphy stated to me that I (Dr. Wadhwa) would be placed on a Performance Improvement Plan (based on the untruthful statements in the annual proficiency report) but he never did this.

Both of us (Dr. Wadhwa and the C&P MD) were not offered an explanation by our supervisors, Dr. Murphy and Dr. Grippi, for the unsatisfactory and the low satisfactory annual proficiency ratings. Both of us were never placed on PIPs.

These examples make it clear that Ms. Romero repeatedly makes completely false statements based on bold-faced lies made by Ms. Conroy. Then, Ms. Ms. Romero reaches conclusions, not based on the genuine facts, but rather on newly invented claims. Furthermore, Ms. Romero has not produced a single shred of evidence to support any of the claims made by her as defendant's counsel.

The strategy used by Ms. Romero is to systematically ignore all of my (Dr. Wadhwa's)

well-founded claims and create issues to distract and mislead this Honorable Court.

Finally, if this Honorable Court affirms the AJ's decision to dismiss my (Dr. Wadhwa's) three independent lawsuits that were consolidated in with our (Dr. Wadhwa's and Ms. Finizie's) Consolidation Civil Action No. 07-3301, it will serve to allow the Agency Officials at the Philadelphia VA Medical Center (PVAMC) to unjustly discipline, harass and bully physicians, such as myself (Dr. Wadhwa).[19]

For example: After my July 23, 2006 protected disclosure, I (Dr. Wadhwa) believe that Margaret O'Shea-Caplan, my supervisors, and other Agency officials then began a series of retaliatory acts to undermine my career.

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[19] I (Dr. Wadhwa) am being treated in the same fashion as Dr. Arthur Newmark was treated by Dr. Murphy and the Agency officials at the Philadelphia VA Medical Center (PVAMC) in Civil Action Case No. 99-CV-5798 *Newmark v. John J. Murphy and the agency* **(the same John J. Murphy, M.D., and the same Agency officials at PVAMC that are involved in formulating false accusations against me).** This civil action case states that when information in a physician's **"evaluation was factually incorrect and he asked how it could be corrected".....the physician was told that he could "attach a note of explanation, but that PVAMC had no procedure to remove false information."** Dr. Newmark, the physician in this case, was ultimately terminated by the Agency officials at PVAMC based on false information. However, in this case where **John Murphy, M.D., and the Agency were the defendants, the case was settled out of court for a sum of $ 297,154.00 on August 28, 2000.**

These acts included, but are not limited to:

1. The **June 26, 2007 incident** (*false arrest*) of us (Dr. Wadhwa and Ms. Finizie)
2. Placement of a VA Police surveillance camera and a large clock in the hallway outside my (Dr. Wadhwa's) office door after my June 26, 2007 *false arrest* in order to monitor my activities during my tour of duty until sometime in July 2008
3. The **February 29, 2008 incident** (staged incident in an attempt to arrest me (Dr. Wadhwa) for alleged *battery*, alleged *assault*, and alleged *disorderly conduct*)
4. The **June 27, 2008 incident** (*unreasonable search and seizure* of my (Dr. Wadhwa's) personal items).

Therefore, we, petitioners (Dr. Wadhwa and Ms. Finizie), respectfully request the opportunity to address these and other arguments made by or omitted by defendant's counsel in the "Defendant's Motion to Dismiss or in the Alternative Summary Judgment."

As stated earlier, we (Dr. Wadhwa and Ms. Finizie) believe oral argument is necessary and appropriate to fairly resolve defendant counsel's motion, and will benefit and assist the Court in its resolution of:

(a) the actual facts in our (Dr. Wadhwa's and Ms. Finizie's) case and

(b) whether we (Dr. Wadhwa and Ms. Finizie), as the Petitioners, are entitled to have these *false and untruthful statements* by Ms. Romero stricken from the record.

For the foregoing reasons, the Court should grant this request and provide a rehearing with oral argument on the issues raised by the petition for review in this proceeding.

Respectfully submitted,

Dom Wadhwa, M.D., *pro se* & Sharon A. Finizie, R.N., *pro se*

Home Addresses of Petitioners

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Telephone: (609) 330-2622 (cell)

Dated: October 22, 2009

Case: 09-2530 Document: 00319895779
Page: 1 Date Filed: 11/09/2009

DLD 298

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
No. 09-2530

DOM WADHWA, M.D.;
SHARON A. FINIZIE, R.N.

v.

R. JAMES NICHOLSON,
Secretary, Department of Veterans Affairs;
MARGARET O'SHEA-CAPLAN;
MARTIN HEYWORTH, M.D.;
MICHAEL GRIPPI, M.D.; JOHN MURPHY,M.D.;
CAROL PATTERSON;
LINDA AUMILLER, R.N.; JEFFREY KAUFMAN;
DEPT VETERAN AFFAIRS;

Dom Wadhwa,
Appellant

SUR PETITION FOR REHEARING

Present: SCIRICA, Chief Judge, SLOVITER, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, and HARDIMAN, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

/s/ D. Brooks Smith
Circuit Judge

Dated: November 9, 2009

PDB/cc: Mr. Dom Wadhwa
Jacqueline C. Romero, Esq.

THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT
21400 U.S. Courthouse
601 Market Street, Philadelphia,
PA 19106-1790

Dom Wadhwa, M.D., *pro se*
Petitioner

Docket No. 08-3321
Consolidated Civil
v. Action No. 07-3301

Department of Veterans Affairs,
Respondent

Petitioner's Informal Brief

I, Petitioner, Dom Wadhwa, M.D. ("Dr. Wadhwa"), respectfully files a Petition for Review with this Honorable Court for Civil Action 07-2677, filed on June 27, 2007 (consolidated into Civil Action No. 07-3301).[20]

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[20] Please note: In Defendant's Opposition to Plaintiff's Motion for Reconsideration, dated July 24, 2008, Jacqueline C. Romero, Esquire, Assistant United States Attorney, *erroneously* stated on page 3 that "Plaintiffs did not file the instant motion for reconsideration until July 14, 2008, well beyond the 10 days specified in the Rule." I, the Petitioner, filed my motion for reconsideration *within* the 10-day time period specified in 7.1 (g).

The following are the responses to the questions for my Petition for Review:

1. Jurisdiction

What order(s) of the district court or agency are you appealing?

I am appealing the decision by Honorable Mary A. McLaughlin, Judge, U.S. District Court for the Eastern District of Pennsylvania (AJ) to dismiss my appeal regarding the Directed Reassignment Order, EEO Case No. 200J-0610-2007101312, filed on March 16, 2007, issued to me by the Agency on December 19, 2006, Civil Action No. 07-2677, filed on June 27, 2007 (consolidated into Civil Action No. 07-3301).

STATEMENT OF SUBJECT MATTER AND PETITIONER'S JURISDICTION

The court had jurisdiction over this action pursuant to 42 U.S.C. §2000e-16 (c) which provides, in pertinent part, that a party must file a civil action within 90 days of receipt of final action taken by the U.S. Equal Employment Opportunity Commission (EEOC) upon an appeal from an agency decision on a complaint of discrimination under Title VII (EEO Case No. 200J-0610-2007101312, filed on March 16, 2007).

The United States District Court for the Eastern District of Pennsylvania is the appropriate venue for this action pursuant to 28 U.S.C. §1391(e)(2), in that a substantial part of the events or

omissions giving rise to my (Dr. Wadhwa's) claim occurred in this judicial district.

The United States Court of Appeals for the Third Circuit has jurisdiction for my Petition for Review for being denied a hearing by the AJ on the Directed Reassignment Order issued to me by the Agency on December 19, 2006, Civil Action 07-2677, filed on June 27, 2007 (consolidated into Civil Action No. 07-3301).

What is the date of the order? When did you file your notice of appeal or petition for review?

On July 24, 2008, Judge McLaughlin dismissed Civil Action No. 07-2677 (consolidated into 07-3301).

On July 31, 2008, I filed my Notice of Petition for Review and the Petitioner's Informal Brief for Civil Action No. 07-2677, filed on June 27, 2007 (consolidated into Civil Action No. 07-3301).

2. Statement of the case

Explain the proceedings in the district court or before the agency (i.e. what the district court or the agency did in deciding your case).

On October 24, 2007, the U.S. District Court for the Eastern District of Pennsylvania consolidated the Directed Reassignment Civil Action No. 07-2677, filed on June 27, 2007 with

three of my other Civil Action lawsuits, Civil Action No. 07-2750 (False Arrest Case), Civil Action No. 07- 2997 (Agency retaliation for filing of False Arrest Case), and Civil Action No. 07-3301 (EEOC Case No. 2003-0642-2007102108, filed on May 7, 2007, remanded to the Agency).

On February 29, 2008, Judge McLaughlin heard the oral arguments on these four civil action lawsuits consolidated into one as Civil Action No. 07-3301.

In the memorandum and order, dated June 20, 2008, Judge McLaughlin states in the footnote on the bottom of page 2, as follows:

"In one other EEOC complaint, 200J06102007101312, the EEOC denied the plaintiff's motion for reconsideration on November 3, 2007. Dr. Wadhwa, however, filed an appeal with the United States Merit Systems Protection Board (MSPB Appeal No. 200702424), which remains pending at the administrative level."

This is an erroneous statement made by Judge McLaughlin. On May 29, 2008, there was a limited hearing on one single issue, as to whether or not my assignment to the Compensation & Pension (C&P) Section was done in retaliation for my whistleblower disclosure of safety issues at PVAMC to the VA IG's Office on July 23, 2006. The MSPB case did not discuss the Directed Reassignment

Order in Civil Action No. 07-2677, filed on June 27, 2007.

On July 14, 2008, I filed a request for reconsideration to Judge McLaughlin to reinstate the Directed Reassignment Civil Action No. 07-2677, based on the initial decision by the MSPB (Docket No. PH-1221-08-0019-W-1) on my whistleblower case, dated June 26, 2008.

3. Statement of facts

Explain the facts and events that led to the complaint in the district court or the action before the agency.

On January 25, 2005, my first level supervisor, John Murphy, M.D., Director of Primary Care, and my second level supervisor, Michael Grippi, M.D., Chief of Medicine, issued a Reprimand to me for declining to sign a blank pre-employment physical form to be completed by my supervisors for a belligerent hostile alcoholic and substance abuse patient for a position as a substitute teacher to teach young children in the Philadelphia School District.

In February 2005, I filed an EEO complaint with the VA Office of Resolution Management regarding the reprimand issued to me by Dr. Murphy and by Dr. Grippi on January 25, 2005.

In retaliation, Dr. Murphy and Dr. Grippi issued an unsatisfactory annual proficiency report to me on December 7, 2005 and then they, with

assistance of Kathleen Craige, RN, Primary Care Nurse Manager, attempted to make charges of alleged patient abuse against me in January 2006.

On July 26, 2006, Dr. Murphy issued a fourteen (14) day suspension to me for an alleged Privacy Act violation, which I did not commit.

On August 30, 2006, Dr. Grippi fully rescinded the proposed fourteen day suspension and then issued a proposed removal action of me for the same alleged Privacy Action violation.

On August 30, 2006, I filed a formal discrimination complaint (EEO Case No. 2003-0642-2006103240) for the proposed removal action of me by my supervisors.

On October 2, 2006, the agency issued a final order without conducting an investigation with regard to the EEO Case No. 2003-0642-2006103240, filed on August 30, 2006, for failure to state a claim.

On October 11, 2006, I presented oral and written responses to Michael Sullivan, former medical center director at PVAMC, as to why I did not violate the Privacy Act. At the end of this meeting, Mr. Sullivan approved and signed my transfer papers to the VA Northern Indiana Health Care System (VA NIHCS), effective October 15, 2006.

On October 26, 2006, I was placed on Administrative Leave by VA NIHCS for

"unresolved employment issues at PVAMC" and I was ordered not to report for duty until further notice.

On December 4, 2006, the Chief Management Support Officer at the VA Central Office in Washington, D.C., issued a Decision Memorandum to the VA Deputy Under Secretary for Health for Operations and Management, in which he recommended I return to PVAMC due to my "unsatisfactory performance and unacceptable conduct" while at PVAMC."

On December 26, 2006, I received a certified letter, dated December 19, 2006, titled "Notice of Directed Reassignment" issued by the VA Deputy Under Secretary for Health for Operations and Management. This order transferred me from VA NIHCS back to PVAMC. Upon my return to PVAMC, I was removed from my clinical duties, demoted with a drop in my annual salary, and I began my reassignment to nonclinical duties in the C&P Section at PVAMC on January 21, 2007.

On March 16, 2007, I filed an EEO complaint, EEO Case No. 200J-0610-2007101312, regarding the Directed Reassignment to nonclinical duties. On April 9, 2007, I received the final agency decision, which dismissed my complaint for the Directed Reassignment Order to nonclinical duties at PVAMC.

On June 27, 2007, I filed Civil Action No. 07-2677 for the final agency decision for the

dismissal of my EEO complaint, EEO Case No. 200J-0610-2007101312, filed on March 16, 2007.

4. Statement of related cases

Have you filed an appeal or petition for review in this case before? If so, give title of case and docket number.

Yes. Civil Action No. 07-3301, filed on August 10, 2007, regarding the July 31, 2007 letter I received from the VA Office of Resolution Management (ORM). This letter was a Final Agency Decision to dismiss ORM Case No. 2003-0642-2007102108, filed on May 7, 2007, for "failure to state a claim."

This was a legitimate discriminatory EEO complaint regarding alleged "Patient Abuse" charges brought against me by my supervisors, Dr. Murphy and Dr. Grippi and by Kathleen Craige, RN, Primary Care Nurse Manager. On February 8, 2007, the EEOC remanded and ordered the agency to provide me with EEO counseling for this EEO complaint. On May 7, 2007, I filed a formal EEO complaint, EEO Case No. 2003-0642-2007102108, on the remanded claims which the Agency had dismissed for "failure to state a claim."

Do you have any cases related to this case pending in the district court, in the court of appeals or before the agency? If so give title of case and docket number.

On October 24, 2007, my four Civil Action lawsuits for relentless discriminatory harassment of me by the Agency Officials at PVAMC (Civil Action Nos. 07-2677, 07-2997, 07-2750, and 07-3301) were consolidated by the U.S. District Court for the Eastern District of Pennsylvania in Civil Action No. 07-3301.

On September 18, 2006, I filed a FOIA Civil Action lawsuit against the Agency Officials at PVAMC, Civil Action No. 06-4362. The Agency Officials at PVAMC have violated the FOIA regulations. These Agency Officials refuse to release the documents I have requested under the Freedom of Information Act, related to the ongoing relentless discriminatory harassment of me.

5. ***Did the district court or the agency incorrectly decide the facts of your case? If so, what facts?***

In retaliation for my previous and ongoing EEO activity since December 20, 2004 and whistleblower disclosure of the of the unsafe working conditions in the Outpatient Primary Care Clinics at PVAMC on July 23, 2006, the Agency Officials at PVAMC issued a series of personnel actions against me, which are as follows:

1. Unsatisfactory annual proficiency rating on December 7, 2005
2. Proposed fourteen (14) day suspension on July 26, 2006

3. Upgraded to a proposed removal from my employment on August 30, 2006
4. Administrative leave from October 27, 2006 to January 21, 2007
5. Directed Reassignment Order issued on December 19, 2006 for my return from NIHCS to PVAMC with a demotion, drop in my annual salary, and denial of my performance pay in Primary Care
6. Removal from a clinical assignment to a nonclinical assignment on January 21, 2007
7. *Reactivated* proposed removal from my employment, dated January 25, 2007
8. Local Administrative Investigation Board convened at an unspecified date in 2007
9. National Administrative Investigation Board convened on March 13, 2007
10. Reprimand issued to me on April 3, 2007
11. *False Arrest* on June 26, 2007
12. An attempt to arrest me for false charges of *Battery*, *Assault*, and *Disorderly Conduct* on February 29, 2008
13. Unreasonable *search and seizure* of my personal items on June 27, 2008

6. *Did the district court or the agency apply the wrong law (either cases or statutes)? If so, what law do you want applied?*

On June 23, 2008, Judge McLaughlin *erroneously* dismissed my Directed Reassignment Order Civil Action No. 07-2677,

claiming this appeal was pending at the administrative level with the United States Merit Systems Protection Board.

On July 24, 2008, Judge McLaughlin offered no explanation for denial of my request for reconsideration of my dismissed Directed Reassignment Order Civil Action No. 07-2677.

7. *Are there any other reasons why the district court's judgment or the agency's decision was wrong? If so, briefly state these reasons.*

The reason given by Judge McLaughlin for dismissal of Civil Action No. 07-2677 is summarized on page 6 of her memorandum and order, dated June 23, 2008, as follows:

"*Receiving a single allegation of patient abuse (by Dr. Wadhwa) from a patient advocate is not 'sufficiently severe or pervasive' to alter the conditions of his employment.*"

This is an *erroneous* conclusory statement by Judge McLaughlin. She made her decision based on this single statement, in order to deny me a hearing on my Directed Reassignment Order Civil Action No. 07-2677, filed on June 27, 2007.

I have been subjected to relentless ongoing harassment by my supervisors, Dr. Murphy, Dr. Grippi, Martin Heyworth, M.D., Chief of Staff, Margaret O'Shea-Caplan, Associate Director, and Kathleen Craige, RN, Nurse

Manager at PVAMC, resulting in a series of personnel actions against me, which are listed in response to Question No. 5, above.

In my request for reconsideration, dated July 14, 2008, I cited some examples of the retaliatory discriminatory harassment EEO complaints that have been dismissed without an investigation by the agency.

8. ***What action do you want the Court of Appeals to take in this case?***

Remedy requested from this Honorable Court:

1. Grant the Petition for Review for my appeal.
2. Vacate the initial decision by Judge McLaughlin, dated July 24, 2008.
3. Remand the case for an unrestricted hearing by the U.S. District Court to discuss all personnel actions taken by PVAMC Agency Officials against me, in *retaliation* for my previous and ongoing EEO activity since December 20, 2004 and for my whistleblower disclosure on July 23, 2006.

Relief requested from this Honorable Court:

a) Admission of wrongdoing by Agency Officials at the Philadelphia VA Medical Center (PVAMC); formation of a Five-Member Physician Committee at PVAMC, with me as the Chairman of this Committee, in order to provide ongoing recommendations to the Agency to prevent a similar occurrence as that

which occurred to me, from happening at PVAMC in the future;

b) Issuance by the Court of a mandatory injunction prohibiting the Agency Officials from the relentless harassment of me at the workplace for exercising my civil rights.

c) Dismissal of Margaret O'Shea-Caplan, Associate Director, for aiding Dr. Murphy and Dr. Grippi in the retaliatory discriminatory prohibited personnel practices against me.

d) Dismissal of Dr. Murphy and Dr. Grippi from the Department of Veterans Affairs for their lack of integrity, violation of VA standards of ethical conduct, conduct policies, performance expectations and prohibited personnel practices;

e) Reporting of Dr. Murphy and Dr. Grippi to the Medical Licensing Board and the Physicians' National Data Bank for their lack of integrity, violation of VA standards of ethical conduct, conduct policies, performance expectations and prohibited personnel practices;

f) Dismissal of Kathleen Craige, R.N., Primary Care Nurse Manager, from the Department of Veterans Affairs for aiding Dr. Murphy and Dr. Grippi in engaging in prohibited personnel practices;

g) All elements of damages allowable by law and any other applicable entitlements, including punitive damages (in an amount to be

determined by the Court to deter the Agency Officials at PVAMC from similar misconduct in the future), compensatory damages, consequential damages, and reasonable attorney fees.

Respectfully submitted,

Dom Wadhwa, M.D., *Petitioner (pro se)*

Dated: July 31, 2008

Home Address of Petitioner
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Telephone: (609) 220-2771

You may attach any documents filed in the district court or before the agency that you think the court of appeals must see in order to decide your appeal or your petition for review. For appeals from the district court, please keep in mind that the entire district court record is transmitted to the court of appeals and is available for the court's review. You must attach copies of the district court docket entries, the opinion and order appealed, and the notice of appeal. Documents not admitted in the district court may not be submitted to the court of appeals without permission of the court.

THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT
21400 U.S. Courthouse
601 Market Street, Philadelphia,
PA 19106-1790

Dom Wadhwa, M.D., *pro se*
Petitioner

Docket No. 08-3321

v.

Department of Veterans Affairs,
Respondent

Petitioner's Response To Respondent's Opposition To Petitioner's Response To Jurisdiction for Petition for Review

On October 17, 2008, Jacqueline Romero, Esquire, Respondent's Counsel filed a response in opposition to my response as a *pro se* petitioner (" Dom Wadhwa, M.D") ("Dr. Wadhwa"), with regard to jurisdiction for Petition for Review of the above captioned Case No. 08-3301 at the United States Court of Appeals for the Third Circuit.

I respectfully submit the following response to Respondent's Counsel's ("Romero") opposition to my response to jurisdiction for Petition for Review:

I. Procedural History and Facts

Ms. Jacqueline Romero, Esquire, made an erroneous opening statement in her Procedural History and Facts, as follows:

Petitioner ("Wadhwa") originally filed a series of four pro se complaints against the United States Department of Veterans Affairs Philadelphia Medical Center ("VA") in the District Court for the Eastern District of Pennsylvania over a period of one and half months, one of which he was joined by plaintiff, Sharon Finizie...

The facts are as follows:

On August 27, 2007, Ms. Romero requested extension of time to respond to my *Directed Reassignment Order* Civil Action lawsuit No. 07-2677, filed on June 27, 2007.

On October 12, 2007, Ms. Romero issued a memorandum to Honorable Harvey Bartle III, Chief Judge, United States District Court, entitled, "Memorandum in Support of Defendant's Motion to Consolidate." In this memorandum, Ms. Romero requested that Chief Judge Bartle III consolidate all four independent Civil Actions lawsuits, Civil Action Nos. 07-2677, 07-2750, 07-2997, and 07-3301 for reasons of "Judicial Economy." On October 24, 2007, Ms. Romero was granted this consolidation by the Court and the consolidated case was assigned Civil Action No. 07-3301.

In response to my request for Default Judgment from the Court for Ms. Romero's failure to respond to Civil Action No. 07-3301, Ms. Romero requested extension of time and the Court granted her this extension on October 24, 2007. On November 9, 2007, Ms. Romero requested a second extension of time for Civil Action No. 07-3301, which was granted to her by the Court until December 13, 2007.

On December 13, 2007, Ms. Romero filed a motion to dismiss the consolidated Civil Action No. 07-3301. In response, the Court issued an Order for oral argument on February 29, 2008.

During the oral argument on February 29, 2008, at the U.S. District Court for the Eastern District of Pennsylvania, Ms. Romero made attempts to dismiss all four cases. Ms. Romero argued that I had not exhausted all administrative remedies through the EEO process and therefore, she claimed that all my cases lacked merit and should be dismissed.

Also, on February 29, 2008, during oral argument, Ms. Romero with the aid of Stacey Conroy, Esquire, Staff Attorney in the Office of Regional Counsel at the Philadelphia VA Medical Center, made an unsuccessful attempt to discredit my character.

Ms. Jacqueline Romero, Esquire, made an <u>erroneous</u> statement in her <u>Procedural History and Facts</u>, as follows:

Although the complaints essentially stated the same facts concerning petitioner Wadhwa's employment disputes under Title VII, the complaints were originally assigned to separate Judges in the District Court.

The facts are as follows:

All four Civil Action lawsuits, Civil Action Nos. 07-2677, 07-2750, 07-2997, and 07-3301, did not have the same facts. The joint *False Arrest* (Bivens) Civil Action lawsuit No. 07-2750 with Ms. Finizie was filed because our Civil Rights had been violated by Agency Officials at PVAMC.

This Civil Rights violation case was assigned to Honorable Juan Sanchez, who scheduled an oral argument for Civil Action No. 07-2750 to be held on October 17, 2007. Ms. Romero requested an extension of time from Judge Sanchez for this civil rights violation case. Judge Sanchez granted this extension of time to Ms. Romero.

In the interim, on October 12, 2007, Ms. Romero sent a memorandum to Chief Judge Bartle III requesting consolidation of the civil rights violation case with my employment discrimination EEO cases for reasons of "Judicial Economy."

On October 23, 2007, Chief Judge Bartle III granted Ms. Romero this consolidation request and Judge Sanchez was taken off this case. The oral argument scheduled for October 17, 2007 for Civil Action No. 07-2750 never took place.

Ms. Jacqueline Romero, Esquire, in her Procedural History and Facts stated, as follows:

On October 12, 2007, respondent filed a Motion to Consolidate these related actions.

The Petitioner's response to this statement by Ms. Romero is, as follows:

On August 27, 2007, Ms. Romero requested an extension of time to respond to my Civil Action lawsuit No. 07-2677, filed on June 27, 2007. This Civil Action lawsuit was filed for the Final Agency Decision on the *Directed Reassignment Order* from William Feeley, VA Deputy Under Secretary for Health for Operations and Management, for my involuntary return to the Philadelphia VAMC from the VA NIHCS. The Court granted Ms. Romero this extension.

On October 12, 2007, Ms. Romero issued a memorandum to Honorable Harvey Bartle III, Chief Judge, United States District Court, entitled, "Memorandum in Support of Defendant's Motion to Consolidate."

In this memorandum, dated October 12, 2007, Ms. Romero requested that Chief Judge Bartle III consolidate all three of my independent Civil

Actions lawsuits, Civil Action Nos. 07-2677, 07-2997, and 07-3301 with my joint independent *False Arrest* Civil Action "Bivens" lawsuit with Ms. Sharon Finizie, Civil Action No. 07-2750.

Please note: The *False Arrest* Case (Bivens) Civil Action No. 07-2750 had nothing to do with Civil Action No. 07-2677, filed on June 27, 2007. Thus, Civil Action No. 07-2750 was assigned to Judge Juan Sanchez at the U.S. District Court for the Eastern District of Pennsylvania.

On September 9, 2007, Ms. Romero requested an extension of time from Judge Sanchez for the *False Arrest* (Bivens) Civil Action No. 07-2750. This extension was granted by the Court until September 24, 2007. On October 4, 2007, Judge Sanchez ordered oral argument for the False Arrest (Bivens) Civil Action No. 07-2750 to be held on October 17, 2007.

On October 5, 2007, the following day, at Ms. Romero's request, Judge Sanchez ordered to postponement of the oral argument scheduled for October 17, 2007. Subsequently, Ms. Romero contacted Chief Judge Bartle III on October 12, 2007 for consolidation of all four of the Civil Action lawsuits, Civil Action Nos. 07-2677, 07-2750, 07-2997, and 07-3301. On October 23, 2007, Chief Judge Bartle III granted Ms. Romero her request for consolidation of all four cases and Judge Sanchez was taken off the *False Arrest* (Bivens) Civil Action No. 07-2750.

Ms. Jacqueline Romero, Esquire, made an erroneous statement in her Procedural History and Facts, as follows:

The District Court granted the motion on October 24, 2007 and consolidated all four actions under Civil Action No. 07-3301.

The Petitioner's response to this statement by Ms. Romero is, as follows:

Ms. Romero requested consolidation for all four of the Civil Action lawsuits for reasons of "Judicial Economy." Ms. Romero used a legal maneuver to override Judge Sanchez's oral argument order (for the *False Arrest* (Bivens) Civil Action No. 07-2750, scheduled for October 17, 2007) by going to Chief Judge Bartle III, who on October 23, 2007, granted Ms. Romero her motion for consolidation and Judge Sanchez was taken off this case.

Ms. Jacqueline Romero, Esquire, made an erroneous statement in her Procedural History and Facts, as follows:

On December 13, 2007, respondent moved for summary judgment on all of petitioner's claims due to procedural defects and substantive legal weaknesses in those claims.

The facts are as follows:

In response to Ms. Romero's request for summary judgment for the consolidated Civil Action No. 07-3301, I filed a motion to strike

defendant's "Memorandum of Law in Support of Defendants Motion to Dismiss." The Court issued an order for oral argument scheduled to take place on February 29, 2008.

Ms. Jacqueline Romero, Esquire, in her <u>Procedural History and Facts</u> stated, as follows:

Oral argument concerning respondent's summary judgment on all of petitioner's claims took place on February 29, 2008.

The Petitioner's response to this statement by Ms. Romero is, as follows:

Ms. Finizie and I were *pro se* plaintiffs for the oral argument that took place on February 29, 2008.

During oral argument, on February 29, 2008, Ms. Romero, with the assistance of Stacey Conroy, Esquire, Staff Attorney from the Office of Regional Counsel at PVAMC, attempted to discredit my claims to Honorable Mary A. McLaughlin.

Ms. Romero, with the help of Ms. Conroy and without a shred of evidence, convinced Judge McLaughlin that I had <u>not</u> exhausted administrative remedies for all four Civil Action lawsuits, Civil Action Nos. 07-2677, 07-2750, 07-2997, and 07-3301, and therefore, they should all be dismissed.

Please note: On June 23, 2008, Judge McLaughlin dismissed three of the four Civil Action lawsuits (Civil Action Nos. 07-2677, 07-2997, and 07-3301). Only the *False Arrest* (Bivens) Civil Action No. 07-2750 was not dismissed. Judge McLaughlin dismissed the three Civil Action lawsuits based on misleading statements and misinformation provided to the Court by Ms. Romero.

Ms. Jacqueline Romero, Esquire, in her Procedural History and Facts stated, as follows:

At oral argument, petitioner argued that he had intended to state a Biven's cause of action in his original complaint in Civil Action No. 07-2750.

The Petitioner's response to this statement by Ms. Romero is, as follows:

On February 29, 2008, during oral argument, Ms. Romero claimed that Ms. Finizie and I had not exhausted administrative remedies for the *False Arrest* (Bivens) Civil Action No. 07-2750. In response, Judge McLaughlin ordered that I provide documentation to the Court to show that in fact I had exhausted administrative remedies for this case.

In addition, on February 29, 2008, Judge McLaughlin ordered that I provide her with the names of the Agency Officials at PVAMC responsible for my *False Arrest* (Bivens) Civil Action No. 07-2750.

Ms. Jacqueline Romero, Esquire, in her Procedural History and Facts stated, as follows:

Respondent opposed allowing petitioner to pursue a Bivens claim at that late date in the litigation.

The Petitioner's response to this statement by Ms. Romero is, as follows:

On February 29, 2008, during oral argument, Ms. Romero claimed that Ms. Finizie and I had not exhausted administrative remedies for the *False Arrest* (Bivens) Civil Action No. 07-2750.

On March 4, 2008, Ms. Finizie and I provided the necessary documents to the Court in support of the Bivens claim related to the *False Arrest* for Civil Action No. 07-2750. Judge McLaughlin issued an order for Ms. Romero to respond by March 31, 2008, to the documents Ms. Finizie and I provided to her.

On March 31, 2008, Ms. Romero filed another motion to dismiss all four cases Civil Action Nos. 07-2677, 07-2750, 07-2997, and 07-3301(consolidated into one in Civil Action No. 07-3301).

Ms. Jacqueline Romero, Esquire, in her Procedural History and Facts stated, as follows:

However, on April 11, 2008, the District Court allowed petitioner to substitute his Bivens cause

of action for the original complaint in Civil Action No. 07-2750 and pursue that cause of action in the consolidated Civil Action No. 07-3301.

The Petitioner's response to this statement by Ms. Romero is, as follows:

On April 11, 2008, Judge McLaughlin issued an order stating "Bivens Action-Civil Action No. 07-2750" will be a substitute for the original complaint in Civil Action 07-2750. Judge McLaughlin denied Ms. Romero's motion to dismiss the Bivens claims in Civil Action No. 07-2750 – this motion was denied as moot.

Ms. Jacqueline Romero, Esquire, in her <u>Procedural History and Facts</u> stated, as follows:

On June 23, 2008, the District Court then ruled that petitioner's claims were dismissed, except for petitioner's Bivens cause of action.

The facts are as follows:

On June 23, 2008, Judge McLaughlin dismissed three of the Civil Action lawsuits (Civil Action Nos. 07-2677, 07-2997, and 07-3301). Only the Bivens cause of action, Civil Action No. 07-2750, was not dismissed.

<u>Please note</u>:
1. Civil Action No. 07-2677 was dismissed by Judge McLaughlin on June 23, 2008, based on <u>misleading statements and misinformation</u>

provided to her by Ms. Romero. In the footnote on page 2 of Judge McLaughlin's June 23, 2008 order it states that Agency Case No. 200J-0610-2007101312, Filed on March 16, 2007 is pending a MSPB Administrative Hearing, but this is not the case.

2. Civil Action No. 07-3301 was dismissed by Judge McLaughlin on June 23, 2008, based on Ms. Romero's misleading statements and misinformation regarding this case. Ms. Romero presented this case as an isolated incident, but this is not the case. There have been several such incidents. Therefore, based on these misleading statements and misinformation Judge McLaughlin's June 23, 2008 order states that this case does not rise to the level of discriminatory harassment by the Agency Officials, Dr. John Murphy, Director of Primary Care, and by Dr. Michael Grippi, Chief of Medicine at the Philadelphia VA Medical Center (PVAMC).

Please note: Civil Action No. 07-3301 was filed on August 10, 2007 because a Final Agency Decision was issued to me for very serious charges of *patient abuse* made against me by my two immediate supervisors, by Dr. Murphy and by Dr. Grippi and by the nurse manager, Ms. Craige (Agency Case No. 2003-0642-2007102108, Filed on May 7, 2007). These EEO complaints were remanded to the Agency by the Equal Employment Opportunity Commission (EEOC) to provide me with precomplaint counseling, which the Agency did. After the precomplaint counseling, the Agency

did not conduct an investigation for these remanded complaints. Instead, the Agency issued a Final Agency Decision for these complaints.

Ms. Jacqueline Romero, Esquire, in her Procedural History and Facts stated, as follows:

The District Court Order does not include a certification pursuant to Federal Rule of Civil Procedure 54(b), nor has petitioner applied for such a certification.

The Petitioner's response to this statement by Ms. Romero is, as follows:

Federal Rule of Civil Procedure 54(b) does not apply in my situation, because I filed Civil Action No. 07-2677 as an independent lawsuit. Ms. Romero requested and was granted consolidation of this Civil Action lawsuit with three other Civil Action lawsuits, Civil Action Nos. 07-2677, 07-2997, and 07-3301, from Chief Judge Bartle III. Therefore, certification under Federal Rule of Civil Procedure 54(b) would not be an issue under these circumstances.

Ms. Jacqueline Romero, Esquire, made an erroneous statement in her Procedural History and Facts, as follows:

On July 14, 2008, petitioner filed an untimely motion for reconsideration for the June 23, 2008 Order.

The facts are as follows:

On July 12, 2008 (not July 14, 2008), I filed a timely motion for reconsideration for the June 23, 2008 Order.

In this motion I requested reconsideration of the dismissed Civil Action No. 07-2677 and Civil Action No. 07-3301 (in consolidated Civil Action No. 07-3301).

Civil Action No. 07-2677 was dismissed by Judge McLaughlin based on misleading statements and misinformation provided to her by Agency's Counsel. In the footnote on page 2 of Judge McLaughlin's Order, dated June 23, 2008, it states that Agency Case No. 200J-0610-2007101312, filed on March 16, 2007, is pending a MSPB Administrative Hearing, and this was not true.

Civil Action No. 07-3301 was dismissed by Judge McLaughlin based on misleading statements and misinformation provided to her by Agency's Counsel. The Agency's Counsel presented this case as an isolated incident and stated that it does not rise to the level of discriminatory harassment by the Agency Officials, Dr. John Murphy, Director of Primary Care and Dr. Michael Grippi, Chief of Medicine at the Philadelphia VA Medical Center (PVAMC). But this was not the case.

Ms. Jacqueline Romero, Esquire, in her Procedural History and Facts stated, as follows:

On July 24, 2008, the District Court denied petitioner's motion for reconsideration and this appeal ensued.

The facts are as follows:

On July 24, 2008, Ms. Romero filed a response in Opposition to my Motion for Reconsideration, filed on July 12, 2008. In this motion, Ms. Romero claimed my Motion for Reconsideration was not timely, when in fact it was timely. Also, in her motion of July 24, 2008, Ms. Romero claimed that there were no valid grounds for reconsideration, because I had not provided new evidence that has any impact on the decision rendered in this case. In fact, I had provided evidence. The footnote on page 2 of Judge McLaughlin's June 23, 2008 Order states that Agency Case No. 200J-0610-2007101312, filed on March 16, 2007, is pending a MSPB Administrative Hearing, but this is not the case.

On the same day, upon receipt of Ms. Romero's response on July 24, 2008, Judge McLaughlin issued an order stating that my Motion for Reconsideration of dismissal of Civil Action No. 07-2677 and Civil Action No. 07-3301 was denied.

Ms. Jacqueline Romero, Esquire, in her Procedural History and Facts stated, as follows:

On August 28, 2008, the Honorable Marcia M. Waldron, Clerk of the United States Court of Appeals for the Third Circuit, sent petitioner a letter warning him that his appeal was in danger of being dismissed due to lack of jurisdiction and invited petitioner to respond.

The Petitioner's response to this statement by Ms. Romero is, as follows:

On October 4, 2008, I filed a response to the jurisdiction issue with the United States Court of Appeals.

Ms. Jacqueline Romero, Esquire, in her Procedural History and Facts stated, as follows:

On October 6, 2008, petitioner filed a response arguing that this Court has appellate jurisdiction over his Appeal.

The Petitioner's response to this statement by Ms. Romero is, as follows:

On October 4, 2008, in response to the jurisdiction issue in the U.S. Court of Appeals for the Third Circuit, I stated that Civil Action No. 07-2677 is an independent lawsuit. This case was consolidated by the U.S. District Court for the Eastern District of Pennsylvania at the request of Ms. Romero in October 2007,

despite my request to that Court not to consolidate this case with three other independent Civil Action cases. Therefore, Federal Rule of Civil Procedure 54 (b) does not apply in my situation.

Thus, I requested the U.S. Court of Appeals to treat Civil Action No. 07-2677 as an independent case for Petition for Review.

II. Argument

Ms. Jacqueline Romero, Esquire, began her opening Argument Statements, as follows:

The Court of Appeals does not have appellate jurisdiction over petitioner's appeal for the District Court's June 23, 2008 Order in this case because the Order is not considered a final, appealable decision.

The Petitioner's response to Ms. Romero's opening Argument Statements is, as follows:

Civil Action No. 07-2677 is an independent lawsuit. This case was consolidated by the U.S. District Court for the Eastern District of Pennsylvania at the request of Ms. Romero in October 2007, despite my request to that Court not to consolidate this case with three other independent Civil Action lawsuits, Civil Action Nos. 07-2750, 07-2997, and 07-3301.

On June 23, 2008, Judge McLaughlin, U.S. District Court for the Eastern District of Pennsylvania, dismissed Civil Action No. 07-2677 based on misleading statements and misinformation provided to her by Ms. Romero. The footnote on page 2 of Judge McLaughlin's June 23, 2008 Order states that Agency Case No. 200J-0610-2007101312, filed on March 16, 2007, is pending a MSPB Administrative Hearing, but this is not the case.

Ms. Jacqueline Romero, Esquire, stated in her Argument Statements as follows:

The Court of Appeals has jurisdiction of appeals from all "final decisions" of the district courts of the United States.

The Petitioner's response to this statement is, as follows:

Civil Action No. 07-2677 is an independent lawsuit, filed on June 27, 2007. On October 23, 2007, at Ms. Romero's request, Chief Judge Bartle III for the U.S. District Court for the Eastern District of Pennsylvania consolidated this independent lawsuit with three other Civil Action lawsuits, Civil Action Nos. 07-2750, 07-2997, and 07-3301.

On June 23, 2008, Judge McLaughlin, U.S. District Court for the Eastern District of Pennsylvania, dismissed Civil Action No. 07-2677. Therefore, her decision to dismiss Civil Action No. 07-2677 as an independent case was final.

Ms. Jacqueline Romero, Esquire, stated in her Argument Statements, as follows:

A final and appealable order "is one" which terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined.

The Petitioner's response to this statement is, as follows:

Civil Action No. 07-2677 is an independent lawsuit, filed on June 27, 2007. This case was dismissed based on misleading statements and misinformation provided by Ms. Romero to the U.S. District Court for the Eastern District of Pennsylvania.

Please note: The footnote on page 2 of Judge McLaughlin's June 23, 2008 Order states that Agency Case No. 200J-0610-2007101312, filed on March 16, 2007, is pending a MSPB Administrative Hearing, but this is not the case.

Ms. Jacqueline Romero, Esquire, stated in her Argument Statements, as follows:

Federal Rule of Civil Procedure 54(b) provides a mechanism for the District Court to render a partial judgment as to some, but not all, parties or claims in a single action.

The Petitioner's response to this statement is, as follows:

Civil Action No. 07-2677 is an independent lawsuit. This case was consolidated by the U.S. District Court for the Eastern District of Pennsylvania at the request of Ms. Romero in October 2007, despite my request to that Court not to consolidate this case with three other independent Civil Action cases, Civil Action Nos. 07-2750, 07-2997, and 07-3301. Therefore, Federal Rule of Civil Procedure 54 (b) does not apply in my situation.

Ms. Jacqueline Romero, Esquire, stated in her Argument Statements, as follows:

Normally, without a Rule 54(b) certification, any order that disposes of fewer than all of the claims or the rights and liabilities of fewer than all of the parties is not a final, appealable order under 28 U.S.C. § 1291.

The Petitioner's response to this statement is, as follows:

Federal Rule of Civil Procedure 54 (b) does not apply in my situation. Civil Action No. 07-2677 is an independent lawsuit. This case was consolidated by the U.S. District Court for the Eastern District of Pennsylvania at the request of Ms. Romero in October 2007.

Ms. Jacqueline Romero, Esquire, stated in her Argument Statements, as follows:

In the present case, the District Court's Order does not resolve all of plaintiff's claims, is not certified under Rule 54(b), and is, therefore not a "final decision" under 28 U.S.C. § 1291.

The Petitioner's response to this statement is, as follows:

Certification under Rule 54 (b) does not apply in my situation, because Civil Action No. 07-2677 is an independent lawsuit. This case was consolidated with three other lawsuits, Civil Action Nos. 07-2750, 07-2997, and 07-3301, by the U.S. District Court for the Eastern District of Pennsylvania at the request of Ms. Romero in October 2007.

Ms. Jacqueline Romero, Esquire, stated in her Argument Statements, as follows:

Indeed, petitioner's Bivens cause of action is still ongoing in the District Court.

The Petitioner's response to this statement is, as follows:

Civil Action No. 07-2750 (Bivens) was filed on July 3, 2007 as an independent lawsuit against the Agency Officials at PVAMC for the *False Arrest* of Sharon Finizie and me for alleged theft of government property. Ms. Finizie and I were read our Miranda Rights on June 26, 2007 in a VA Police holding room for common

criminals and our civil rights were violated. This lawsuit was assigned to Judge Sanchez.

On September 9, 2007, Ms. Romero requested extension of time from Judge Sanchez for the False Arrest (Bivens) Civil Action No. 07-2750. This extension was granted by the Court, until September 24, 2007. On October 4, 2007, Judge Sanchez issued an Order for oral argument for the *False Arrest* (Bivens) Civil Action No. 07-2750, to be held on October 17, 2007.

On October 5, 2007, the following day, at Ms. Romero's request, Judge Sanchez issued another Order to postpone the oral argument scheduled for October 17, 2007. Subsequently, Ms. Romero contacted Chief Judge Bartle III on October 12, 2007 for consolidation of all four of the Civil Action cases, Civil Action Nos. 07-2677, 07-2750, 07-2997, and 07-3301. On October 23, 2007, Chief Judge Bartle III granted Ms. Romero her request for consolidation of all four cases and Judge Sanchez was taken off the *False Arrest* (Bivens) Civil Action No. 07-2750.

Therefore, Ms. Romero's argument that Civil Action No. 07-2750 (Bivens) is ongoing has nothing to do with the remaining three lawsuits dismissed by Judge McLaughlin (Civil Action Nos. 07-2677, 07-2997, and 07-3301) that are part of this appeal to the U.S. Court of Appeals for the Third Circuit.

Ms. Jacqueline Romero, Esquire, stated in her Argument Statements, as follows:

Where two or more actions are consolidated for all purposes of discovery and trial, judgment in any of those actions is not appealable either until all of the consolidated actions have been resolved or until the district court grants a motion for certification of interlocutory appeal.

The Petitioner's response to this statement is, as follows:

Civil Action No. 07-2677 is an independent lawsuit. This case was consolidated with three other lawsuits, Civil Action Nos. 07-2750, 07-2997, and 07-3301, by the U.S. District Court for the Eastern District of Pennsylvania at the request of Ms. Romero in October 2007. Therefore, the above statement by Ms. Romero, regarding the granting of a motion for certification by the District Court does not apply here.

Ms. Jacqueline Romero, Esquire, stated in her Argument Statements, as follows:

In limited circumstances, where various claims are consolidated in one case and only some of the consolidated claims are dismissed from the case, the appellate court may apply a fact specific jurisdictional analysis that examines the overlap of all of the claims, the relationship of the various parties, and the likelihood of the claims being tied together.

The Petitioner's response to this statement is, as follows:

Civil Action No. 07-2677 is an independent lawsuit. This case was consolidated with three other lawsuits, Civil Action Nos. 07-2750, 07-2997, and 07-3301, by the U.S. District Court for the Eastern District of Pennsylvania at the request of Ms. Romero in October 2007. Therefore, the above statement by Ms. Romero, regarding the fact specific jurisdictional analysis by the appellate court does not apply here.

Ms. Jacqueline Romero, Esquire, stated in her Argument Statements, as follows:

However, even if the Bogosian analysis were applied to the instant case, the District Court's Order would still not be considered final.

The Petitioner's response to this statement is, as follows:

Civil Action No. 07-2677 is an independent lawsuit. This case was consolidated with three other lawsuits, Civil Action Nos. 07-2750, 07-2997, and 07-3301, by the U.S. District Court for the Eastern District of Pennsylvania at the request of Ms. Romero in October 2007. Therefore, the Bogosian analysis does not apply here.

Ms. Jacqueline Romero, Esquire, stated in her Argument Statements, as follows:

For example, the claims in the present case involve nearly identical facts (i.e. petitioner uses the same basic underlying acts and events to support his allegations of discrimination and his allegations of constitutional violations), the claims involve identical parties with the same representatives, and the claims have all been consolidated before one judge for trial together.

The Petitioner's response to this statement is, as follows:

My claims in all four civil action lawsuits, Civil Action Nos. 07-2677, 07-2750, 07-2997, and 07-3301, are not identical as declared in the above statement by Ms. Romero.

Ms. Jacqueline Romero, Esquire, stated in her Argument Statements, as follows:

Therefore, even under the Bogosian analysis, the Order in the present case is not a "final decision" for the purposes of 28 U.S.C. § 1291.

The Petitioner's response to this statement is, as follows:

As stated earlier, Civil Action No. 07-2677 is an independent lawsuit. This case was consolidated with three other lawsuits, Civil Action Nos. 07-2750, 07-2997, and 07-3301, by the U.S. District Court for the Eastern District of Pennsylvania at the request of Ms. Romero

in October 2007. Therefore, the Bogosian analysis does not apply here.

III. Conclusion

Ms. Jacqueline Romero, Esquire, stated in her Conclusion Statement, as follows:
Because the Order is not considered a final decision under 28 U.S.C. § 1291, the Court of Appeals lacks appellate jurisdiction over petitioner's appeal, and the appeal should be dismissed.

The Petitioner's response to this statement is, as follows:
Judge McLaughlin's Order, dated June 23, 2008, dismissed three Civil Action lawsuits (Civil Action Nos. 07-2677, 07-2997, and 07-3301). Only the *False Arrest* (Bivens) Civil Action No. 07-2750 was not dismissed. Judge McLaughlin's decision was final for these three lawsuits, because on July 24, 2008 she issued an Order which stated that my Request for Reconsideration was denied. Judge McLaughlin's final decision for these three lawsuits was based on misleading statements and misinformation provided to the Court by Ms. Romero.

In Summary:

Civil Action No. 07-2677 is an independent lawsuit that was consolidated by the Court at the request of Ms. Romero in October 2007, despite my request to the Court not to consolidate this case with three other independent Civil Action lawsuits, Civil Action

Nos. 07-2750, 07-2997, and 07-3301. Therefore, the U.S. Court of Appeals for the Third Circuit has jurisdiction over my appeal.

I hereby request this Honorable Court to treat Civil Action No. 07-2677 as an independent case for Petition for Review.

Respectfully submitted,

Dom Wadhwa, M.D., *Petitioner (pro se)*

Date: October 31, 2008

Home Address of Petitioner
Dom Wadhwa, M.D., 215 E Camden Avenue, H-13, Moorestown, NJ 08057
Telephone: (609) 220-2771 (cell)

Case: 08-3321 Document: 00313448681
Page: 1 Date Filed: 12/15/2008

DLD-37 **November 21, 2008**
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
C.A. No. **08-3321**

DOM WADHWA, M.D., ET AL.
Appellant

vs.

R. JAMES NICHOLSON, ET AL.
(E.D. Pa. Civ. No. 07-cv-03301)

Present: BARRY, AMBRO AND SMITH,
Circuit Judges

Submitted are:

1. By the Clerk for possible dismissal due to a jurisdictional defect;
2. Appellant's response to Clerk's letter advising of possible dismissal;
3. Appellee's response in opposition to Appellant's response; and
4. Appellant's response to Appellee's opposition

in the above-captioned case.

Respectfully,
Clerk

MMW/NSS/mw/smw

ORDER

The foregoing appeal is dismissed because the Court lacks jurisdiction to review the District Court's order of June 23, 2008, at this time. The District Court's order granted Defendant's motion to dismiss all claims in all of the cases consolidated in 07-0331 except for the Bivens action. The order entered judgment on all claims except for the Bivens action, for which the Plaintiff submitted a new second amended consolidated complaint. To be appealable, an order must either dismiss all claims as to all parties or be certified by the District Court pursuant to Fed. R. Civ. P. 54(b). Mellon Bank, N.A., 945 F. 2d at 640. Because (i) a claim remains pending and; (ii) the District Court did not direct entry of judgment pursuant to Rule 54(b), we lack appellate jurisdiction at this time.

By the Court,

/s/Maryanne Trump Barry
Circuit Judge

Dated: December 15, 2008

smw/cc: Dom Wadhwa
Sharon A. Finizie, Esq.
Jacqueline C. Romero, Esq.

THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT
21400 U.S. Courthouse
601 Market Street, Philadelphia,
PA 19106-1790

Dom Wadhwa, M.D., *pro se*
Petitioner

Docket No. 08-3321

v.

Department of Veterans Affairs,
Respondent

Plaintiff's Motion For Direct Entry Judgment
Filed December 20, 2008 (Docket Number 65)
For Court Order Dated June 23, 2008
(Docket Number 40)

On December 20, 2008, I requested from this Honorable Court a direct entry judgment **(Docket Number 65) (Exhibit A)** from the United States District Court for the Eastern District of Pennsylvania for all claims dismissed by Honorable Mary A. McLaughlin in her June 23, 2008 Memorandum and Order **(Docket Number 40)**, in the consolidated Civil Action No. 07-3301.

1. On December 15, 2008, Honorable Maryanne Trump Barry, Circuit Judge for the United States Court of Appeals for the Third Circuit,

issued an Order[21] which stated that the Court lacks jurisdiction to review the District Court's Order of June 23, 2008 without direct entry judgment of the dismissed claims by Judge McLaughlin. [22]

2. I have not received the direct entry judgment for the District Court Order of June 23, 2008.[23] I have requested three extensions for my Request for Reconsideration from Judge Barry since December 20, 2008 **(Exhibits B-D)**. Judge Barry's Court Order dated February 13,

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[21] Please note: Judge Barry's Order stated, "To be appealable to the United States Court of Appeals for the Third Circuit, an Order must either dismiss all claims as to all parties or be certified by the District Court pursuant to Fed. R. Civ. P. 54(b). Mellon Bank, N.A., 945 F. 2d at 640."

[22] Please note: On October 12, 2007, Jacqueline Romero, Esquire, issued a memorandum to Honorable Harvey Bartle, III, Chief Judge, United States District Court, titled, "Memorandum in Support of Defendant's Motion to Consolidate." In this memorandum, Ms. Romero requested that Chief Judge Bartle consolidate all four independent Civil Action lawsuits, Civil Action Nos. 07-2677, 07-2750, 07-2997 and 07-3301 for reasons of "Judicial Economy." On October 24, 2007, Ms. Romero was granted this consolidation by the Court and the consolidated case was assigned as Civil Action No. 07-3301.

[23] Honorable Mary A. McLaughlin, Judge for the United States District Court, issued the June 23, 2008 Order which dismissed three of the above four civil action lawsuits, based on *inaccurate* information submitted to her by Ms. Romero.

2009 states this is would be my last extension for this appeal.

3. I wish to file my Request for Reconsideration Appeal to the United States Court of Appeals for the Third Circuit with the direct entry judgment court order from the United States District Court for the Eastern District of Pennsylvania for all of my dismissed claims by Judge McLaughlin issued in her June 23, 2008 Order.

4. My Request for Reconsideration of my appeal to the United States Court of Appeals to the Third Circuit Court is due March 6, 2009. The Court Order from the United States Court of Appeals for the Third Circuit from February 13, 2009 states, "No further extensions will be granted."

Thank you,

Respectfully submitted,

Dom Wadhwa, M.D., *pro se*

Enclosures: Exhibits A-D

Dated: March 3, 2009

cc: Honorable Mary A. McLaughlin, Judge
U.S. District Court for the Eastern District
of Pennsylvania

Honorable Maryanne Trump Barry, Circuit
Judge U.S. Court of Appeals for the Third
Circuit

Jacqueline Romero, Esquire, Assistant
United States Attorney

Assistant General Counsel, Department of
Veterans Affairs, Washington, D.C.

Case 2:07-cv-03301-MAM Document 83
Filed 03/25/2009 Page 1 of 1

IN THE UNITED STATES
DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA

DOM WADHWA, M.D.
CIVIL ACTION NO. 07-3301

v.

R. JAMES NICHOLSON

ORDER

AND NOW, this 25th day of March, 2009, upon consideration of the plaintiffs' Request for Reconsideration for Direct Entry Judgment Filed December 20, 2008, For Court Order Dated June 23, 2008, (Docket No. 81), IT IS HEREBY ORDERED that said motion is DENIED.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.

SUPREME COURT OF THE
UNITED STATES
1 First Street, NE
Washington, DC 20543

Dom Wadhwa, M.D., *pro se*
Sharon A. Finizie, R.N., *pro se*
Petitioners,

US Court of Appeals
for the Third Circuit
Docket No. 09-2530

v.

Department of Veterans Affairs,
Respondent.

Certification Re: Electronic Filing and Compliance

We, Petitioners, Dom Wadhwa, M.D. ("Dr. Wadhwa"), and Sharon A. Finizie, R.N., ("Ms. Finizie") hereby certify that the electronic copy of our *"Petitioners' Request for Writ of Certiorari"* is identical to the hard copy that was filed on January 8, 2010.

The electronic copy of our *Petitioners' Request for Writ of Certiorari* was scanned using the McAfee Anti-Virus program.

The number of words in our above request is 1,556.

/s/
Dom Wadhwa, M.D., *pro se* &
Sharon A. Finizie, R.N., *pro se*

Dated: January 8, 2010

SUPREME COURT OF THE
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CERTIFICATE OF SERVICE

The undersigned hereby certify that true and correct copies of the foregoing *Petitioners' Request for Writ of Certiorari* in the above matter are served upon the following by first class mail, this date, to:

Solicitor General of the United States
Room 5614, Department of Justice
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/s/
Dom Wadhwa, M.D., *pro se* &
Sharon A. Finizie, R.N., *pro se*

Dated: January 8, 2010